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Cover: Original wash drawing on the reading of a will, done by William Allen Rogers. A wood engraving of the drawing, made on May 20, 1877, appeared in Harper's Weekly *for April 6, 1878. (Prints and Photographs Division)*

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CONTENTS

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Editor's Note

ANNIVERSARIES are the time for reflection, the time for examination, the time for renewal of spirit and of determination. December 10, 1968, will mark the 20th anniversary of the proclamation by the United Nations General Assembly of the Universal Declaration of Human Rights. The lead article in this issue deals with the protection of those rights.

Through the centuries, serious thinkers have seen education as the best safeguard of the rights of man. "Only the educated," declared Epictetus, "are free." Thomas Jefferson wrote to James Madison: "Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the utmost security for the preservation of a due degree of liberty." He expressed this conviction even more strongly in a letter to his friend Pierre Samuel Du Pont de Nemours: "Enlighten the people generally, and tyranny and oppressions of body & mind will vanish like evil spirits at the dawn of day." Later James A. Garfield was to repeat the sentiment in terms as strong as Jefferson's: "Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained."

Yet today, 20 years after the proclamation of the Universal Declaration of Human Rights, close to 750 million of the world's adults can neither read nor write. Of the billion and more who enjoy both capabilities, how many use these precious gifts to preserve freedom, to ensure justice?

Man's right to read has been fought for on many grounds, in many ages, by many men. It is a battle that is being fought today. It is axiomatic that every freedom carries with it a responsibility. The freedom to read lays on those who would claim it the responsibility of reading widely, reading critically, reading attentively. Most important of all, to the one who can read falls the terrible burden of thinking. Every man who reads must pay for his good fortune if we are to preserve what Jefferson called "a due degree of liberty."

Judge Learned Hand summed it up in his statement: "We shall succeed only so far as we continue that most distasteful of all activity, the intolerable labor of thought." SLW

The International Protection of Human Rights

by Armins Rusis

Two decades ago, on December 10, 1948, the Universal Declaration of Human Rights was proclaimed by the General Assembly of the United Nations. In this year, designated as International Human Rights Year 1968, on the 20th anniversary of the Declaration, it seems timely to assess the major developments in the field of human rights under its impact.

The present status of human rights and fundamental freedoms is the result of a long development reaching far back in history and cannot be covered in a single article regardless of its length. To the extent that human rights have been equated with the natural rights of every human being, they may be traced back to the concept of natural law, which was first systematically formulated by the Stoics after the breakdown of the Greek city states.[1] In the eyes of the Stoics, natural law was universal; it applied not only to citizens of individual states but to all human beings. It was also superior to any positive law and consisted of the elementary principles of justice apparent to the "eye of reason." The natural rights conferred by natural law were "not the particular privileges of citizens of particular states, but something to which every human being everywhere was entitled, in virtue of the simple fact of being human and rational." [2]

The political philosophers of the Middle Ages, especially St. Thomas Aquinas, stressed that all rulers, however powerful, had to obey the superior natural law: the *ius resistendi* (right to resistance) may be used against rulers whose acts are contrary to the precepts of natural law. This right to resist became a dominating principle of the Catholic doctrine of natural law, which later was incorporated in Protestant theology.[3] The Reformation,

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with its religious individualism, along with the Renaissance, brought the individual human being and his right to religious freedom to the fore. This right of religious freedom, according to Rudolf Laun, may be considered the first human right asserted in modern times.[4] It had a strong impact not only in Europe, but also on the political traditions of the American settlers. Some 150 years later this principle, which had become an essential part of the Puritan tradition, was reasserted in article 16 of the Declaration of Rights made by the "representatives of the good people of Virginia":

> That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.[5]

An additional impulse for broadening the concept of human rights was provided by the natural law doctrine of the rationalists. Locke and Rousseau defended human rights as part of their political theory. They interpreted the doctrine of natural rights as justifying disobedience and even rebellion if governors, princes, or kings abused the authority to govern conferred upon them "by a contract of government, a deed of trust or by an act of delegation." Their approach popularized the modern notion of natural rights and gave it dynamic content.[6]

Originating in part in antiquity and in part in modern times, these ideas converged to create a cluster of human rights, or fundamental concepts, which were incorporated in the human rights declarations of the American and French Revolutions. Among them were the rights of every human being to the pursuit of happiness, freedom of thought,

conscience, and religion, freedom of speech and association, and freedom from arbitrary arrest.

In practice the kind of rights considered fundamental, as well as their scope and interpretation, "has varied widely from time to time according to the general conditions and standards of the time" [7] and from country to country. So also has their enforcement. But never did their universality reach the degree it has achieved at the present time.

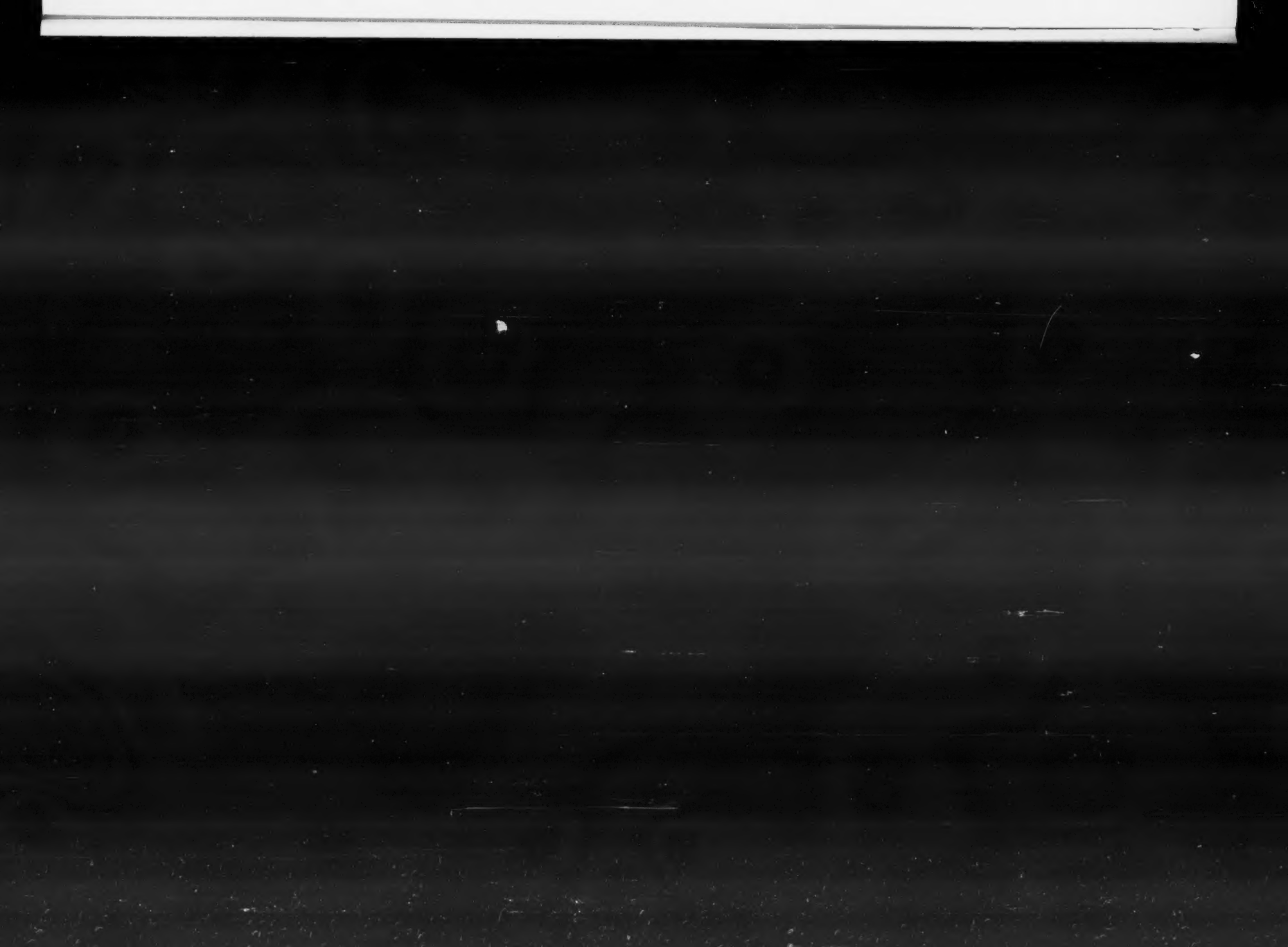
The great interest shown by the family of nations in the international protection of human rights is due largely to the atrocities of the Second World War and also to the flagrant disregard of the rights of human beings by their own governments, which reached overwhelming proportions in the countries under totalitarian regimes. After the end of the Second World War, it was commonly understood that an attempt should be made to set up minimum standards with respect to the treatment of human beings, in particular by their own governments. This was a novelty in international relations inasmuch as there had been up to then only sporadic instances of such a practice, for example, the humanitarian interventions of the Holy Alliance and the minority protection clauses or declarations following the First World War. These earlier attempts had been applicable only to weaker, smaller states or to states that had been defeated in war. After the Second World War the feeling was widespread that "the United Nations and its Member States should in a new world order show concern for human rights and prevent the abuse of power which ultimately [leads] to war and breach of the peace." [8]

It is both fascinating and stimulating to write an essay on human rights as they have developed in the last few decades because their internationalization signifies that international law is undergoing a far-reaching change: to protect human beings even against their own state it is making inroads into the sphere heretofore reserved to the exclusive domestic jurisdiction of sovereign states. The internationalization of the protection of human rights is an area in which moral and legal norms are interwoven to form a pattern so colorful and intricate that it is difficult to detect the many separate threads of which it consists, although from a vantage point of historical perspective the dominant thread cannot remain unseen. An attentive observer, reading between the lines, noting what has been said and what has been ignored, and thus trying to discover the trend both in national and international instruments involving human rights, cannot fail to be hopeful about the progress in the field. A realistic approach is imperative and the sovereign states should not be expected to divest themselves all of a sudden of their century-old prerogatives inherent in the present structure of international law, which can operate only through states or international organizations.

An impartial observer, as unbiased and unprejudiced as the frailty of human nature permits, cannot but note that despite the seemingly interminable draft stage of the many international instruments in the field of human rights—the two basic Covenants on Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, were drafted between 1948 and December 16, 1966, when they were adopted by the General Assembly of the United Nations—there are many signs of the changes toward a more effective protection of some human rights. The inroads made by international law into the domestic jurisdiction of sovereign States have been mentioned above. This change affects the fundamental structure of international law—that only States or international organizations may be subjects of international law and that individuals may enforce their rights in the sphere of public international law only through the medium of a sovereign State.

The general trend is toward the granting of certain rights to individuals, so that, within limits, they become subjects of public international law. Among these rights is that of petition for redress in his own name before an international semi-judicial or judicial agency in case an individual's rights are violated—even by his own State, which cannot justify its action by pleading one of the exceptions as a rule available to the State. This new trend, however, cannot be hastened because the abnormal growth and fortuitous carrying out of

A page, from the facsimile in the Library of Congress, of the Universal Declaration of Human Rights placed in the cornerstone of the United Nations Headquarters Building on October 24, 1949.



an idea may doom it or the institution in which it has sprung to life.

In the long run these changes augur well for the promotion, protection, and enforcement of selected fundamental human rights of individuals, who slowly emerge from the unenviable status of being objects of rights in international life to acquire some legal status, however restricted, in public international law.[9] To some extent this is due to a largely hortatory international document—the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights

In retrospect the Universal Declaration of Human Rights may be judged more clearly than was possible at the time of its adoption or in the years immediately following, during which all the noble aims of its framers seemed to be thwarted by dissension. "In the present world context of bipolarized and other bloc power and of imminent expectations of violence," it is improbable, Myres S. McDougal and Gerhard Bebr point out in their article on "Human Rights in the United Nations," [10]

> that startling new progress can be quickly effected on a global scale either in the acceptance of new authoritative prescriptions about human rights or in the establishment of workable enforcement measures. . . . The degree to which the Universal Declaration of Human Rights, with its broad prescriptions of the essential rights of a free society, has captured the loyalties and imagination of peoples and decision-makers offers, however, a certain opportunity. . . . Though the prospects for effective promotion of human rights on a global scale are dim, the very factors that cause these prospects to be dim make imperative even more intensified efforts on half-world and regional bases by peoples who cherish the values of a free, peaceful, and abundant world society.[11]

The immediate goal is "the clarification

Article 1 **All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.**

Article 2 **Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 **Everyone has the right to life, liberty and security of person.**

Article 4 **No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.**

Article 5 **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**

Article 6 **Everyone has the right to recognition everywhere as a person before the law.**

Article 7 **All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.**

Article 8 **Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.**

Article 9 **No one shall be subjected to arbitrary arrest, detention or exile.**

to the peoples of the world of what such world society may mean in contrast with totalitarian oppression" in order to "promote the most effective political co-operation." This may be achieved, McDougal and Bebr maintain, only if the Western democracies "assume a potentially world-encompassing moral leadership" in the field of the international protection of human rights. They must replace "timid hesitation" with new enthusiasm expressed in action perfecting and promulgating their version of the human rights principles "as authoritative community goals within the areas accessible to them." This path is recommended to the Western democracies "and peoples of similar values" because there is no real chance "immediately to achieve universality in the acceptance and application of their human rights principles." [12]

These quotations express the deep split which has developed in the understanding of the concept of human rights among the Member States of the United Nations, jeopardizing their further immediate development on a global scale. There are real or "behind the scenes" forces which are the causes for the apparent repudiation of the course charted by the framers of the Universal Declaration at a time when the memories of the monstrous breaches of human rights in World War II had not yet faded.

To go back to the proclamation of another famous Declaration—that of American Independence—will give us a better perspective for an unbiased and unprejudiced judgment of the merits and deficiencies of the Universal Declaration, since the latter was no doubt influenced by earlier attempts to formulate the fundamental rights of individuals.

In her stirring story of the 1787 Constitutional Convention, *Miracle at Philadelphia,* Catherine Drinker Bowen made the following interesting observation: [13]

> The Continental Congress, composing its first Declaration and Resolves (1774), had said the colonists were entitled to "life, liberty and property." In the Declaration of Independence, Jefferson altered it to read, "life, liberty and the pursuit of happiness." If nobody knew exactly what that meant, they did not need to know. They felt it, breathed it in the Revolutionary air. To pursue happiness signified that a man could rise in the world according to his abilities and his industry.

This change appears to be very meaningful: the static element "property" is replaced by a dynamic process—"the pursuit of happiness." At the same time the defense of the natural right to happiness acquires the nature of an inherent human right, along with the rights to life and liberty. As Mrs. Bowen pointed out:

> There is something refreshing in the eighteenth-century use of the word happiness in public documents. Jefferson's "pursuit of happiness" was an "unalienable right" of mankind, along with life and liberty. Even earlier, in the Virginia Bill of Rights, George Mason had granted to men "certain inherent rights, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Chastellux, friend of America, had written a treatise *On Public Happiness* (*De la Félicité Publique*). "The true national spirit," he said, "which allies itself perfectly with liberty and happiness." [14]

Happiness, in particular public happiness, Mrs. Bowen says, was dominant as an idea in progressive constitutional documents of the 18th and 19th centuries. But even then this idea met with criticism because grave differences of opinion arose among the framers and the persons who had to apply it in practice. These difficulties stemmed from the conflict between the individual's pursuit of happiness and public happiness, or the happiness of the people. The same difficulty with respect to the rights of the individual in his pursuit of happiness confronts the United Nations, in enforcing the list of rights agreed upon in the Universal Declaration of Human Rights of 1948 and the 1966 Covenants on Civil and Political Rights and on Social, Economic, and Cultural Rights.

The Meaning of the Declaration

The Universal Declaration of Human Rights was adopted on December 10, 1948, in Geneva, after two years of study by the Commission on Human Rights established by the Economic and Social Council under Article

68 of the Charter. It was a declaration of the faith of its framers in the eternal value of the protection of human rights; it was also a reaffirmation of the principle explicitly recognized by the United Nations Charter that the maintenance of international peace and security and the protection of human rights are today interdependent. The signers of this Declaration were in much the same position as the signers of the American Declaration of Independence with respect to their intention to set up, on broad lines, a standard maxim for a free society: in the case of the Declaration of American Independence, a free society in the Thirteen States; in the case of the Universal Declaration of Human Rights, a common standard of achievement for all peoples and all nations however small and underdeveloped. The only real difference is that of universality, which loomed as a distant goal before the framers of the Universal Declaration.

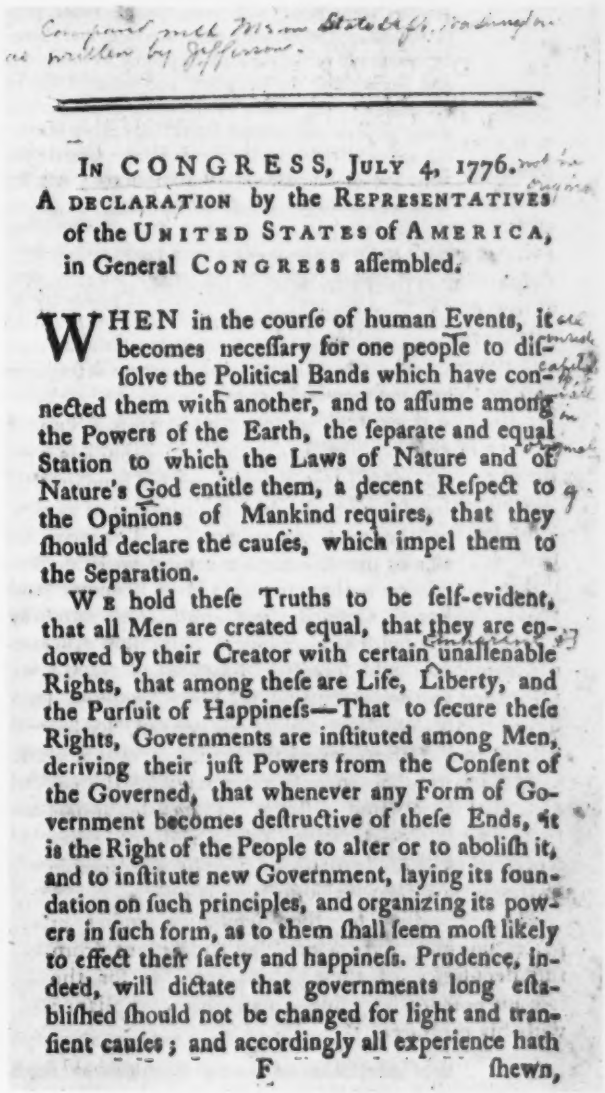
The last paragraph of the Preamble of the Universal Declaration reads as follows:

> The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[15]

Compare with this excerpt from the Universal Declaration the words that Abraham Lincoln spoke at Springfield on June 26, 1857, about the Declaration of Independence. They provide us with a deeper insight into the problem of human rights on both the national and the international plane:

> I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal—equal with "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." This they

Declaration of Independence as first published in book form, in The Genuine Principles of the Ancient Saxon, or English Constitution, *by Demophilus [pseudo.]. Printer's advertisement leaf is dated July 8, 1776. From American Imprint Section of the Batchelder Collection, Library of Congress.*



Compared with Mss in State Dept. Washington as written by Jefferson.

IN CONGRESS, JULY 4, 1776.

A DECLARATION by the REPRESENTATIVES of the UNITED STATES of AMERICA, in General CONGRESS assembled.

WHEN in the courſe of human Events, it becomes neceſſary for one people to diſſolve the Political Bands which have connected them with another, and to aſſume among the Powers of the Earth, the ſeparate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Reſpect to the Opinions of Mankind requires, that they ſhould declare the cauſes, which impel them to the Separation.

WE hold theſe Truths to be ſelf-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among theſe are Life, Liberty, and the Purſuit of Happineſs—That to ſecure theſe Rights, Governments are inſtituted among Men, deriving their juſt Powers from the Conſent of the Governed, that whenever any Form of Government becomes deſtructive of theſe Ends, it is the Right of the People to alter or to aboliſh it, and to inſtitute new Government, laying its foundation on ſuch principles, and organizing its powers in ſuch form, as to them ſhall ſeem moſt likely to effect their ſafety and happineſs. Prudence, indeed, will dictate that governments long eſtabliſhed ſhould not be changed for light and tranſient cauſes; and accordingly all experience hath

F ſhewn,

said, and this they meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that *enforcement* of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should re-appear in this fair land and commence their vocation they should find left for them at least one hard nut to crack.[16]

One of the purposes of the United Nations Charter is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Art. 1, par. 3). It also provides for the setting up of a commission on human rights by its Economic and Social Council (Art. 68). The carefully worded text of Article 1, paragraph 3, leaves no doubt that the promotion of respect for human rights is limited to the encouragement of voluntary efforts of the Member States within the framework of the United Nations. At the San Francisco Conference which drafted the Charter, several delegations—notably those of Chile, Cuba, and Panama—proposed to go beyond this narrow formulation by providing that the United Nations guarantee the protection of specified human rights. Panama even wanted a bill of rights incorporated in the Charter, but the majority of countries refused to give the newly organized international body such sweeping powers. It was generally understood, however, that the Commission on Human Rights would draft such a bill.[17]

In defining the functions and purposes of this Commission, the Preparatory Commission of the United Nations ruled that the Human Rights Commission would have the duty of assisting the Economic and Social Council in discharging its responsibility under the Charter to promote human rights.[18] It also recommended the inclusion of the following in the Commission's specific objectives:

Formulating an International Bill of Rights;

Formulating recommendations for an international declaration or convention on such matters as civil liberties, the status of women, and freedom of information;

The protection of minorities;

The prevention of discrimination on grounds of race, sex, language, or religion; and

The consideration of any matters within the field of human rights likely to impair the general welfare or friendly relations among nations.[19]

The General Assembly of the United Nations adopted these recommendations in January 1946. At first it appeared that the Commission would be authorized to watch over the general observance of human rights, and that this function would be reflected in the International Bill of Rights. But in 1947 the Commission recognized that it had no power to take any action with respect to complaints concerning human rights.[20] This was a major setback to be felt for many years to come.

The International Bill of Human Rights consisted of three documents: a Draft Declaration on Human Rights, a Draft Covenant on Human Rights, and Draft Measures of Implementation. The Declaration on Human Rights was the first to reach the floor of the General Assembly in the fall of 1948, where it was debated in its Third Committee and in plenary sessions and finally adopted on December 10, 1948, under the name "Universal Declaration of Human Rights." [21] The vote was 48 votes in favor of the Declaration, with 8 abstentions.[22]

In the preamble the authors of the Declaration supplied the frame of reference for the rights they were about to proclaim:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

In anticipation of the adoption of the Declaration, Mrs. Franklin D. Roosevelt, Chairman of the Commission on Human Rights and the principal representative of the United States on the Third Committee, characterized its importance as follows:

This Declaration may well become the international Magna Carta of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries.[23]

The President of the General Assembly, after the vote was taken, said that the adoption of that

very important Declaration by a big majority without any direct opposition was a remarkable achievement . . . [that] the Declaration only marked a first step since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in a great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms. That document was backed by the authority of the body of opinion of the United Nations as a whole, and millions of people, men, women and children all over the world, would turn to it for help, guidance and inspiration.[24]

Two points were made here: the universal character of the human rights asserted in the Declaration was extolled while it was admitted that the document imposed no legal obligation on the States. It is "probably this absence of legal obligation that made Governments willing to subscribe to the Declaration formulated in very wide and sometimes deceptive terms," said Gaius Ezejiofor.[25] Even Mrs. Roosevelt subscribed to the point of view that the Declaration established no legal obligations:

In giving our approval to the Declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by a formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.[26]

This feature of the Declaration—that it provided for no legal obligation or enforceability—was anticipated by Hersch Lauterpacht, an authority on human rights, and was severely criticized by him. In his 1947 lectures at the Hague Academy of International Law he said: "The urgent need of mankind is not the recognition and declaration of fundamental human rights but their protection by the international community." [27] His writings also stressed that even the moral force and authority of the Declaration are "in direct proportion to the degree of sacrifice of the sovereignty of states which it involves" [28] and that "the Declaration does not purport to imply any sacrifice of the sovereignty of the State on the altar of the inalienable rights of man and, through them, of the peace of the world." [29] He also rejected the idea of a progressive implementa-

tion of the Declaration by a number of conventions on particular subjects:

> It would result in the unedifying spectacle of the fundamental and inalienable rights of man being made the object of separate treaties, signed by a limited number of states, subject to denunciation and other vicissitudes to which treaties are liable, and ratified, slowly and precariously, by an even smaller number—an undignified anti-climax to the solemn proclamation of human rights and to what ought to have been a decisive landmark in the history of freedom.[30]

Lauterpacht's opinion has proved to be only partially correct, inasmuch as the conventions on specific rights have pointed the way toward the protection of human rights.[31] In the last months of his life, in contemplating a new edition of *International Law and Human Rights*, Lauterpacht "was giving serious consideration to modifying his view concerning the desirability of such a series of conventions on civil liberties." [32]

The human rights of the Declaration may be subdivided into two large groups: traditional civil and political rights (Arts. 1–21), and the new economic, social, and cultural rights (Arts. 22–27).

Traditional civil and political rights. After having proclaimed that "all human beings are born free and equal in dignity and rights" and "should act towards one another in a spirit of brotherhood" (Art. 1), as well as having spelled out the principle of nondiscrimination (Art. 2), the document lists civil rights as the right:

To life, liberty, and security of person;
To freedom from slavery or servitude;
To freedom from torture or cruel, inhuman, or degrading treatment or punishment;
To recognition everywhere as a person before the law;
To equal protection of the law;
To an effective remedy by the competent national tribunals for acts violating one's fundamental rights;
To freedom from arbitrary arrest, detention, or exile;
To a fair trial, civil or criminal;
To the presumption of innocence and protection against *ex post facto* criminal laws;
To privacy of home and correspondence and protection of one's honor and reputation;
To freedom of movement and residence inside and outside one's country;
To seek and enjoy in other countries asylum from persecution except in cases of "prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations";
To nationality and to change one's nationality;
To marry and to found a family;
To own property and not to be arbitrarily deprived of it;
To freedom of thought, conscience, and religion;
To freedom of opinion and expression;
To peaceful assembly and association.

Only Article 21 is devoted to political rights, which include the right to take part in the government of one's country.

Economic, social, and cultural rights. Among these are the right:

To social security;
To work under just and favorable conditions;
To join trade unions for the protection of one's interests;
To rest and leisure;
To an adequate standard of living;
To education;
To participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.

The last three articles of the Declaration (Arts. 28–30) spell out the right "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" but add that this right is combined with duties of the individual to the community. The exercise of all these rights may be limited by law to secure the exercise of the same rights by others, as well as to meet "the just requirements of morality, public order and the general welfare in a

democratic society." The exercise of rights and freedoms contrary to the purposes and principles of the United Nations is prohibited and so are activities intended to destroy the rights and freedoms set forth in the Declaration.

The Impact of the Declaration

The Universal Declaration of Human Rights has had an enormous influence in the international, regional, and national field, both within and outside the United Nations. It has been said that the Declaration and the Charter of the United Nations together "have given a decisive impetus to the more concrete solutions subsequently adopted at other levels." [33] Egon Schwelb, then Deputy Director, Division of Human Rights of the United Nations Secretariat,[34] pinpointed several years ago three main areas where the influence of the Declaration can be traced. First, it has been used "as a yardstick to measure the degree of respect for human rights: by governments, international conferences, regional intergovernmental organizations, specialized agencies and the United Nations, or as a basis for action or exhortation." Second, it has been made part and parcel of some international treaties and conventions and of some domestic laws while others quote from or expressly refer to the Declaration. Third, it has had a direct influence on national constitutions and municipal legislation.[35] The constitutions of the former French colonies in Africa contain guarantees of rights and freedoms based on the Declaration; the constitutions of the former British colonies include provisions for the protection of basic rights and freedoms patterned on the European Convention on Human Rights, which is derived from the Universal Declaration.[36]

The Oxford scholar Sir Humphrey Waldock [37] has voiced the opinion that "this constant and widespread recognition of the principles of the Universal Declaration clothes it . . . in the character of customary law." He also attributes special importance to the fact that the new nations have endorsed the principles of the Universal Declaration rather than the Communist doctrine of human rights:

> The Declaration then sets out the classic rights and freedoms which are the essential bulwarks of the rule of law. The Communist doctrine of human rights is different. The rights are those of the people—the proletariat; the proletariat are the ruling class in the State, ruling through the organs of the State; accordingly, there is no question of the protection of the governed against the governors in their version of a democratic State; the governed determine, develop and protect their own human rights through the organs of the State. Moreover, under Communist doctrine, the principle of "self-determination" means that the peoples of each State are completely free to determine all questions of their own human rights for themselves; and any attempt by other States or by an international organization to intervene in human rights questions within a State is in consequence a violation of the principle of self-determination and of the equality of States. In short, the sole international aspect of the protection of human rights is the safeguarding of the right of self-determination. The Universal Declaration is wholly incompatible with that doctrine of human rights, and the endorsement of the Declaration by the new States is therefore a fact of first importance.[38]

Charles G. Fenwick, a foremost American authority on international law, has stated that the Universal Declaration of Human Rights enumerates in detail the human rights contemplated in the Charter of the United Nations:

> Here, for the first time in the history of international law, was an act of the whole community of states, looking behind the formal organization of their governments to the individual human beings who constitute the legal body of the state. It creates, in a sense, a bond of unity cutting across state lines and restricting the sovereignty of the state in a vital area of its domestic life.[39]

Some of these rights, safeguarding "the welfare of man as man," had been spelled out earlier in the constitution of the International Labor Office and in other ILO documents, Fenwick points out:

> The international community has come to realize more and more of recent years that the welfare of the individual is a matter of concern irrespective of the particular state of which he happens to be a national, and that measures must be taken to im-

prove his condition and to raise the standard of living not immediately in the interest of the state of which he is a national but in his own interest as a human being. . . . The International Labor Office . . . has demonstrated the concern of its members not only for the welfare of the worker as a citizen of a particular state but the worker as a human being whatever his nationality or racial group. The fact that the draft conventions of the organization call for ratification by the separate states relates to the administration of the measures proposed, not to the humanitarian objectives of the measures themselves.[40]

It is significant, Fenwick believes, that the revised ILO Constitution proclaims that "peace can be established only if it is based upon socialist justice" and that "the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries." [41]

For use at the International Conference on Human Rights, 1968, the Secretary-General of the United Nations prepared an important study entitled *Measures Taken Within the United Nations in the Field of Human Rights* [42] and a *Supplement,* bringing it up to December 31, 1967.[43] In addition to a section on the implementation of the rights proclaimed in the Universal Declaration of Human Rights, separate sections are included on the right to self-determination, the elimination of discrimination, apartheid and racial discrimination in South Africa, the status of women, war crimes and crimes against humanity, and assistance to victims of persecution. Other United Nations instruments in the human rights field, such as the Declaration of the Rights of the Child, are also discussed.

To document the subject of human rights many scholarly monographs and many articles in legal periodicals have been published, and most of these are available at the Library of Congress. Soon after the Declaration of Human Rights was adopted, Duke University published a symposium on international human rights in the summer and autumn 1949 issues of *Law and Contemporary Problems.*[44] A symposium on the international law of human rights, addressed "by lawyers in private practice and in government service, judges, legislators, teachers, and students of law" from many nations, was held at Howard University and was reported in the spring 1965 issue of the *Howard Law Journal.*[45] Another symposium on international procedures to protect human rights was published in the *Iowa Law Review,* October 1967.[46]

The United Nations has published reports of seminars held under its auspices in all parts of the world on matters relating to the protection of human rights in criminal law and criminal procedure and protection against the illegal exercise or the abuse of administrative authority.[47]

The European Convention on Human Rights

This convention was signed on November 4, 1950, in Rome. It went into effect on September 3, 1953,[48] after ratification by 10 States. As of January 1, 1967, it had been ratified by 16 States: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta (i.e., the Sovereign Order of Malta), the Netherlands, Norway, Sweden, Turkey and the United Kingdom—by all the members of the Council of Europe except France and Switzerland.[49] It was drawn up by the statutory organs of the Council of Europe: the Committee of Ministers, composed of the Foreign Ministers of all Member States, and the Consultative Assembly, consisting of nongovernmental representatives appointed by the legislatures of all Member States.[50] The European Convention has been called a revolutionary text "not so much by reason of the human rights enumerated and defined therein, as of the provisions for implementation or collective international enforcement." [51] It has also been hailed as a "new landmark in the development of the status of the individual in international law." [52]

This point was also made by the Council of Europe in one of its publications:

The novel character of this Convention cannot be overemphasized. It is no exaggeration to say that it marks a revolution in international law. Indeed, for the first time in history, States have agreed to

be responsible, before an international tribunal, for their behavior towards their own citizens. In this way, international control is established over a limited but important part of national administration.[53]

Heribert Golsong has said that "The very essence of the Convention, its most important innovation, lies in the machinery for supervising the operation of the treaty; in other words, in its international system of enforcement by means of judicial process." [54] And in assessing the strong points of the European Convention, the Oxford scholar Andrew Martin wrote: "A mere definition of human rights without setting up international machinery for their enforcement seemed to be clearly recognized as a road to frustration." [55]

The European Convention on Human Rights is one of the tangible expressions of the drive toward European integration. "The intent of its framers was to forestall any dictatorial designs on the part of governments and to establish instead the Rule of Law, at least among European States, by laying down collective safeguards for Human Rights and making the domestic political system of each Member State of the Council of Europe the ultimate concern and responsibility of all Members." [56] Drafted and adopted "to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration," the European Convention is based on that Declaration and on a previous draft of the United Nations Charter.

The European Convention does not guarantee all the rights and freedoms of the Universal Declaration. Social and economic rights are not protected because the framers of the Convention considered them to be vague and to represent moral or political, rather than legal, concepts and therefore to be difficult to enforce in the flux of European social and international change.[57]

Five protocols supplementing the Convention were concluded.[58] The First Protocol, of March 20, 1952, adds three human rights and the Fourth Protocol, of September 16, 1963, adds four more. Thus the rights protected by the machinery of the Convention now total 18. The overall picture is, of course, complicated by the fact that although all Member States of the Council of Europe except two have ratified the basic text, they have not ratified all of the protocols.

The human rights protected under the European Convention and its protocols are the right:

To life (Art. 2);

To freedom from torture or inhuman or degrading treatment or punishment (Art. 3);

To freedom from slavery, servitude, or forced or compulsory labor (Art. 4);

To liberty and security of person—invoked against arbitrary arrest and detention (Art. 5);

To a fair trial (Art. 6);

To be protected against *ex post facto* laws (Art. 7);

To respect for a person's private and family life, his home, and correspondence (Art. 8);

To freedom of thought, conscience, and religion (Art. 9);

To freedom of expression (Art. 10);

To freedom of assembly and association (Art. 11);

To marry and found a family at a marriageable age (Art. 12);

To peaceful enjoyment of one's possessions (Art. 1, First Protocol);

To education (Art. 2, First Protocol);

To free elections by secret ballot at reasonable intervals (Art. 3, First Protocol);

To fulfill a contractual obligation (Art. 1, Fourth Protocol);

To freedom of movement, to choose one's residence and to leave any country including his own (Art. 2, Fourth Protocol);

To freedom from expulsion and denial of reentry to his own country (Art. 3, Fourth Protocol);

To freedom from collective expulsion of aliens (Art. 4, Fourth Protocol).

Unlike the Universal Declaration of Human Rights, in which human rights and fundamental freedoms are stated in broad terms, the European Convention and its amending protocols contain definitions of each right or free-

dom guaranteed, coupled with provisions concerning the restrictions which may be placed upon it in certain circumstances to protect the freedoms of other persons or to safeguard national security, public order, or economic welfare. There is, however, a general escape clause in Article 15 (1):

> In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligation under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not incompatible with its other obligations under international law.

Even during a public emergency certain rights are safeguarded against derogation by Article 15 (2): the right to life (except in respect to death resulting from lawful acts of war); to freedom from torture or inhuman or degrading punishment; to freedom from slavery and servitude; to freedom from punishment due to *ex post facto* criminal laws. Furthermore, although all rights and freedoms are secured to everyone within the jurisdiction of the signatories of the Convention, they may restrict the political activities of aliens (Art. 16).

Finally, following the example set by Article 30 of the Universal Declaration of Human Rights, Article 17 of the European Convention prohibits infringement on the rights mentioned therein by providing that no State, group, or person may interpret the Convention in such a way as to entitle them to engage in any activity or act aimed at the destruction of the rights of others. It further strengthens individual rights by prohibiting governments from applying restrictions "for any other purpose than those for which they have been prescribed" (Art. 18).

It is interesting to note that the wording of the European Convention, which reflects the persistent drive toward European unity and also the desire of its framers to preserve the existing liberties and practices of Western Europe and to encourage their extension over a wider area, was reached only after heated debates in the Consultative Assembly over the question whether there should be a mere listing of the rights to be protected, a statement of principles, such as are in the Universal Declaration of Human Rights, or whether there should be a precise and detailed definition of the rights to be included.[28] This conflict is described by Viktor Liebscher, Chief Prosecutor of the Supreme Court of Austria:

> . . . in the very earliest stages of the process which led to the adoption of the European Convention two diametrically opposite schools of thought confronted each other. There were those who wanted a comprehensive enumeration of general principles which each party to the treaty would be required to apply *in accordance with its national laws* and jurisprudence. Each State would be free to lay down standards for the exercise and protection of the various rights and freedoms within its own jurisdiction. The other view held that *precise definition* of the rights to be protected—making provision, where necessary, for permissible exceptions—was an essential prerequisite to the conclusion of a Convention. Such definitions should be embodied in formal laws, whose clear wording would leave no doubt as to the nature and extent of the obligations assumed by the parties. The Convention should therefore spell out, down to the last detail, the content and scope of the rights and freedoms guaranteed to the individual.
>
> The views of the jurists on the drafting committee varied considerably. Objections to the second formula were raised on the ground that it would immeasurably complicate the framing of a workable Convention, and lead to unavoidable clashes with municipal law provisions. It should not be forgotten that the membership of the Council of Europe, though small by comparison with the United Nations, comprised three different legal systems—the Anglo-Saxon, the Scandinavian, and that of continental European States based mainly on the Napoleonic Code—whose fundamental elements often differed considerably. It would therefore be preferable to leave it for each party to determine how far modifications were required in its own statutes.
>
> Nevertheless, in 1950, in the political committee of the newly-founded Council of Europe it was the second view, by and large, which prevailed—that which favoured imposing rigid obligations on States without regard for their municipal law systems. The resulting difficulties, which had been foreseen at the beginning of this new chapter in European legal history, are far from having been overcome. That this grandiose idea of European legal integration shall not prove unworkable in practice will depend on the intelligence, initiative and readiness to co-operate in a spirit of good will displayed by jurists in all European countries.[29]

It may be said that the European Convention on Human Rights has proved its viability in over 15 years of operation. This is largely due to the wisely conservative policy of the three agencies entrusted with implementing the protection of human rights by judicial process: the European Commission of Human Rights, the Committee of Ministers of the Council of Europe, and the European Court of Human Rights.

The European Commission of Human Rights consists of the same number of members as there are contracting parties, elected by the Consultative Assembly for a period of six years. No two members may be nationals of the same State. They sit on the Commission in an individual capacity and not as representatives of their States.[61] The Commission exercises two kinds of jurisdiction: ruling upon petitions by States and by individuals. Because by ratifying the Convention a country implicitly accepts the jurisdiction of the Commission to pass on complaints lodged by other contracting parties, any party to the Convention may refer to the Commission an alleged breach of the Convention's provisions by another member party. The other kind of jurisdiction—to consider petitions from any person, nongovernmental organization, or group of individuals claiming that its rights have been violated by a State—depends on prior recognition by that State of the competence of the individual petitions.[62] Declarations of submission to this optional jurisdiction may be made for a specific period, and many States have availed themselves of the opportunity and, as a rule, have extended their submission for another period of time. Eleven of the 16 European countries which are parties to the Convention have recognized the right of individual petition [63] so that this legal remedy is now available to some 150 million persons within the jurisdiction of these States.[64]

With respect to the scope of the Commission's jurisdiction, the time-honored principle of exhaustion of local remedies prevails: the Commission may hear a case only after all domestic remedies in the State against which the petition is directed have been exhausted according to the generally recognized rules of international law.[65] The principal tasks of the Commission, which exercises quasi-judical, investigatory, and conciliatory functions, are to establish the facts of a case and to try to effect a settlement. The quasi-judicial phase of its activities consists in its finding out whether the complainant has made out a prima facie case that a provision of the Convention has been violated. State petitions are sent to the State against which the claim is made, with the request that it submit to the Commission its observations in writing on the admissibility of the application.[66] Petitions by private persons or organizations are not automatically referred to the State concerned. The Commission has adopted a procedure of disposing of absurd or frivolous applications and of not sending to governments applications of no interest or of malicious intent. Such a petition is assigned to a group of three of its members, who report if it is "manifestly ill-founded." If the subcommission unanimously reports that the application appears to be admissible, the referral is made; otherwise the Commission may either declare the application inadmissible or refer it to the State concerned.[67] The criteria for inadmissibility are contained in Article 27 of the Convention:

> *Article 27.* 1. The Commission shall not deal with any petition submitted under Article 25 which
> (a) is anonymous, or
> (b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information.
>
> 2. The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the rights of petition.
>
> 3. The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

In ruling upon admissibility the Commission fulfills its quasi-judicial function, and its decision rejecting an application as inadmissible is final. If it has found the petition admissible, a full investigation ensues and, if the facts show a violation of the Convention, the Commission tries to effect "a friendly settle-

318-298 O—68——2

ment of the matter on the basis of respect for Human Rights as defined in the Convention" (Art. 28(b)). A petition accepted against a State is entrusted to a subcommission of seven members. In case of a friendly settlement, the Commission's report, containing a brief statement of facts and of the solution reached, is drawn up and published. In the opposite case, the report, stating the opinion of the Commission as to whether a violation of the Convention has taken place, is sent to the Committee of Ministers and to the State concerned. The Committee of Ministers "shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention" (Art. 32(1)).

The above-mentioned procedure concerning the subcommission of three members of the European Commission of Human Rights has been abolished by one of the two protocols to the Convention, signed on May 6, 1963. The other protocol conferred upon the European Court of Human Rights the competence to give advisory opinions. This court, which had been authorized by the European Convention, could not begin functioning until six member states accepted its compulsory jurisdiction. In September 1958 Austria and Iceland added their acceptances to those of Belgium, Denmark, the Federal Republic of Germany, Ireland, and the Netherlands. On January 21, 1959, the judges were elected by the Consultative Assembly and the court was ready to assume its role.[68] By 1966, however, the court had considered only three cases.

The role of the European Court of Human Rights has been enhanced to a certain extent by the fact that "the friendly settlement procedure has failed and, in fact, has been an embarrassment to the operation of the Commission," as Gordon S. Weil, one of the most perceptive American students of the European system of protection of human rights, has pointed out.[69] In addition, "the possibility of being hailed before an international tribunal [is] an adequate sanction in itself."[70] Such sanction is part of the enforcement system set up to ensure the observance of the obligations assumed by the signatories of the Convention.[71] The role of the Committee of Ministers in the protection of certain human rights under the Convention stems from the fact that a purely political body like the Committee may be better qualified to handle certain matters than would a judicial body. The Committee "is obliged to deal with all applications declared admissible involving states not having accepted the jurisdiction of the Court," but "it may also be used for individual applications which the Commission or the state involved decides not to refer to the Court."[72] It is this unique blend of quasi-judicial, judicial, and political decision-making which has given the European system of human rights' protection the needed stability or required flexibility, as the case may be. The fact that the Commission has seen fit to reject more than 99 percent of the individual applications submitted to it,[73] Weil says, has proved to be "not a sign of weakness, but rather of the beneficial influence of the Convention in member states."[74]

On the other hand, the European Convention has a number of substantial weaknesses which must be overcome in order to make it more significant and effective. As Weil has said,

> The greatest fault that must be overcome is the failure of Member States to place the Convention in a political context. Unfortunately, the Convention is regarded as merely a legal document. It is that, but it is much more. The Member States must recognise that the Convention was created for political purposes, not the least of which was the promotion of European unity. . . . If the problems of making the Convention work well are one of a number of thorny matters which are easier put aside than decided on in the process of unifying Europe, Europe can only be unified by seeking the lowest common denominator among States. This would hardly be real unification. Though no State can expect a material gain from the application of a fully effective Convention, certainly not all of the objectives sought by any country in the unification process are tangible.
>
> Thus the Member States must regard the Convention as a political undertaking (even if that means more politically motivated interstate applications). They must agree to making the necessary credits available for the public information programme . . . and for making the Commission a permanent full-time body with adequate staff. They must make the Convention an element of

further progress in the field of European unification by inserting the question of ratification or acceptance of its optional clauses or expansion of its provisions into the framework of current negotiations. The alternative to such actions is a "little Convention" condemned to play a minor role both in the protection of human rights and in the promotion of European unity.

These efforts may seem idealistic or utopian. So, perhaps, would have the Convention in 1945. It is the responsibility of those who are the guardians of the Convention, members of the Court and Commission, the Secretariat of the Council of Europe and the lawyers and others who follow the development of the Convention closely, to take the political risks necessary to reawaken a political appreciation of the Convention.[75]

In writing in 1964 about European organizations for guarding human rights, Egon Schwelb said that they were "among the best-documented international organs." [76] This was not the case, however, during the first years after the European Convention on Human Rights became operational.

The scanty documentation of the early rulings of the European Commission on the admissibility or inadmissibility of applicants was remedied to a certain extent when the Commission ruled that "when it is deciding on the admissibility or otherwise of the applications, it performs a judicial function and its decisions on admissibility as distinct from its report on the substance can therefore be published." [77] The *Yearbook of the European Convention on Human Rights,* beginning with the volume for 1955–57, published by the authority of the Committee of Ministers of the Council of Europe in accordance with its resolution of February 6, 1958, contains such decisions. In addition, the Secretariat of the Council of Europe has issued in mimeographed form a *Collection of Decisions of the European Commission of Human Rights,* which will later appear in the *Yearbook.*

Human Rights in National and International Law; the Proceedings of the Second International Conference on the European Convention on Human Rights Held in Vienna Under the Auspices of the Council of Europe and the University of Vienna, 18–20 October 1965, edited by A. H. Robertson (Manchester, 1968), contains addresses and written communications by many authorities in their field plus discussions of them.

The Inter-American Human Rights Movement

In analyzing the Charter of the United Nations in 1948, Charles G. Fenwick pointed out that among its significant features is a series of articles (Chap. VIII, Arts. 52–54) providing for "regional arrangements." [78] Gerhard Bebr later characterized these provisions as "an attempt to relate the regional organizations to the world organization and to reconcile the principles of universalism and regionalism." [79] The regional arrangements, Professor Fenwick said,

> were due chiefly to the desire of the American Republics to maintain their inter-American system which had demonstrated its usefulness in preserving the peace of the Western hemisphere. The problem was, how to integrate regional systems with the universal system, so as not to weaken in any way the overall authority of a world organization, and yet at the same time to encourage recourse to regional agencies for the pacific settlement of disputes and to make use of regional agencies for enforcement action. . . . As finally adopted after a number of amendments to the Dumbarton Oaks Proposals, the Charter recognizes the existence of regional arrangements or agencies for the maintenance of peace, provided that they are consistent with the purposes and principles of the United Nations. (Article 52).

The Charter of the New Organization of American States (OAS), adopted at the Ninth International Conference of American States at Bogota, Colombia, in the spring of 1948,[80] proclaims that "Within the United Nations, the Organization of American States is a regional agency." (Art. 1). "As a matter of fact, the Organization of American States operates with complete freedom in all other respects than those involving security matters; and while provision is made for collaboration with the United Nations, it is a collaboration that does not involve any degree of subordination or agency." [81]

Among the large number of resolutions, declarations, and agreements stemming from the Bogota Conference is an outstanding doc-

ument titled "American Declaration of the Rights and Duties of Man." [82] This Declaration deserves special attention because it antedates and to some extent may have paved the way for the adoption of the Universal Declaration. Drafted by the Inter-American Juridical Committee in 1945 and redrafted in 1947 following the observations of the American Governments, the American Declaration was adopted after serious deliberation. Its contents have been characterized by Professor Fenwick, one of the foremost authorities on international law in general and American international law in particular:

> The "American Declaration of the Rights and Duties of Man" . . . sets forth in detail both the traditional political rights of man, such as have been embodied in the bills of rights of the American Constitutions from the beginning, and the newer social rights of man which reflect the more recent tendency to call upon the state for positive measures to promote economic and social security as a condition of the practical enjoyment of political rights. The two sets of rights are fundamentally different in character, and it might have been well if the Declaration had indicated more clearly the distinction between them, all the more so in that the tendency of today is to elaborate upon the social rights and to offer the action of the state in that field as a justification for the denial of the older political freedoms." [83]

Thus, in the American Declaration of the Rights and Duties of Man the present dual concept of human rights, which also appears in the Universal Declaration, shows up for the first time. The traditional civil and political rights, as the expression of an individualistic, democratic liberalism, have their origin in the struggle of the individual against political tyranny and totalitarianism; the social, economic, and cultural rights serve as a protection from the ever-increasing power given to the modern welfare state as it assumes control over economic and other activities which heretofore were part and parcel of the sphere of individual liberty. The individual is now threatened by the curbs put upon him by a more or less "planned economy" not only in collectivist regimes but also in the democracies.[84]

As has been the case with most modern declarations of human rights, the Bogota Conference did not reach an agreement on the enforcement of the Declaration, but it recommended that the protection of rights should be by a juridical organ and that "where internationally recognized rights were concerned, juridical protection, to be effective, should emanate from an international organ." Furthermore, the Conference called upon the Inter-American Juridical Committee "to prepare a draft statute providing for the creation of an Inter-American Court to guarantee the rights of man." [85]

Despite lip service paid to it by all parties concerned, little was done for some years to implement the doctrine expressed in the preamble of the American Declaration: "The international protection of the rights of man should be the principal guide of an evolving American law." [86] Considerable progress was achieved only in 1959 at the Fifth Meeting of Consultation of Ministers of Foreign Affairs, which called upon the Inter-American Council of Jurists to draft a human rights convention and provide an Inter-American court to enforce it.[87] Another important step was also taken: an Inter-American Commission on Human Rights was authorized, composed of seven members serving individually, not as representatives of their countries.

The Draft Inter-American Convention on Human Rights, unlike the European Convention on Human Rights, contains provisions on economic, social, and cultural rights (Arts. 20–33) in addition to civil and political rights. Otherwise, it borrows much from its European counterpart, although, as Gaius Ezejiofor points out, the Inter-American draft is "a less onerous document. . . . The differences in the severity of the sanctions contemplated in the two documents may be explained by the fact that there is less solidarity and cohesion among members of the OAS than among members of the Council of Europe and that the Council of Jurists had this in mind when drafting the Convention." [88] Prepared for presentation in 1960 at the Eleventh Inter-American Conference, which did not take place in that year as planned, the draft did not come up for discussion until the Second Special Conference, held at Rio de Janeiro, November 17–30, 1965.[89] By this time it was felt

that it had become outdated and should be revised for submission to a later specialized conference.

Even at the Third Special Conference held at Buenos Aires in February 1967, it was assumed that the long-awaited inter-American treaty on human rights would eventually be adopted but not necessarily at an early date. In the protocol confirming the creation of the Human Rights Commission as an official OAS organ, the Conference directed the Commission to "keep vigilance over the observance of human rights" until the proposed convention became effective.[90]

For its accomplishments in attempting to carry out this directive, the Inter-American Commission on Human Rights deserves special praise. Before it was granted expanded functions under the 1965 amended Statute of the Commission, it had broadly interpreted its own powers by ruling that it had jurisdiction to investigate individual complaints and to make recommendations to particular governments of OAS countries, although the OAS Council had several times refused to grant the Commission such authority.[91] The Human Rights Commission has consistently demonstrated "that a strong demand for the international protection of human rights exists and that, even without another treaty, much can be done to promote their observation." The Commission's regulations issued on May 2, 1967 (OEA/SER.L/V/II.17, Doc. 26), as well as other of its actions, have been described by Donald T. Fox in his recent article, already quoted several times:

> The regulations issued under this amended Statute permit the Commission to consider signed complaints from groups or individuals; to communicate relevant parts thereof to the governments complained of (without disclosing the identity of the complainant); and to examine evidence adduced by complainant, government or witnesses or obtained from documents or observation *in loco*. The only material condition precedent to the exercise of these powers is verification by the Commission that the internal legal procedures of the state complained of have been exhausted. If the complaint is substantiated by evidence or by presumption in the event of failure of the government complained of to respond within 180 days of a request for information, the Commission may formulate recommendations. If the government does not adopt these recommendations within a reasonable time, the Commission may report this to an Inter-American Conference or to a Meeting of Consultation of Ministers of Foreign Affairs. If these organs take no action and the government complained against continues to ignore the Commission's recommendations, they may be published.
>
> It is important to note that this amendment of the Commission's Statute by the Second Special Inter-American Conference entails consent by member states involved to the investigatory and reporting functions of the Commission. Even a censorious recommendation intended to influence the conduct of a particular state could be excluded by this consent from any possible characterization as an act of intervention.
>
> It is also significant that the regulations issued pursuant to this Statute in May 1967, expressly defined the rights which may be violated; for example, the right of anyone detained to test the legality thereof before a court without delay or to be released. This declaration of protected human rights is like the Convention requested by the Fifth Meeting of Consultation for adoption by an Inter-American Conference. The Commission had suggested that the Second Special Inter-American Conference adopt such a declaration of rights as part of the Commission's Statute, but this suggestion was not followed. By setting forth in its own regulations the rights whose observance it will supervise, the Commission took action which its superior organs in the Inter-American System were unable or unwilling to do.[92]

The field of Central and Latin American regional organization, long ignored by international lawyers in Europe, and the development of human rights in America have both been receiving attention outside the Western Hemisphere. Witness the Colloquium on Central and Latin American Regional Organizations, Ditchley Park, July 1-3, 1966, sponsored by the British Institute of International and Comparative Law. The new focus on these matters is due to the realization of "the need for the evolution of legal techniques, and useful rules for finding solutions in similar areas of the world where recognition of human rights is badly needed." The concept of human rights in the Americas seems to be different in scope from its counterpart in Europe. Roy S. Lee has pointed out that Argentina and Uruguay have separately proposed the inclusion as basic human rights of the right of

asylum and the prohibition of military revolution and of capital punishment.[93]

New vistas on the future development and protection of human rights in the Western Hemisphere have been opened by the disavowal of the doctrine of humanitarian intervention as part of the emerging Law of Inter-American Institutions. The doctrine of the inherent right of self-defense and established procedures for the OAS to take collective measures of defense have, conversely, also contributed to the protection of human rights by encouraging joint rather than individual response to crisis situations. Joint OAS action is to be directed against a "member professing and practicing the theories of Marxism-Leninism," who thus endangers continental unity and American democratic institutions by increasingly intense Communist subversion.[94]

Commenting on the efforts to formulate regional conventions in America, Jean-Flavien Lalive, a Swiss lawyer who has been for some time Secretary General of the International Commission of Jurists (Geneva), voiced the opinion that an Inter-American Convention on Human Rights should be restricted to the Latin American States alone, because of their "common conception of human rights and particularly of the judicial institutions required to ensure respect for them." Such a task would be facilitated, he contends, by highly developed administrative law and practice, which in his opinion have no counterparts in common law countries. Admitting that "the disadvantages of an excessive fragmentation in the field are far from negligible," he nevertheless thinks that the different degrees of development of the Latin American nations might make it necessary to prepare a number of conventions, each covering a few States.[95]

These suggestions of Lalive, made at the Second International Conference on the European Convention on Human Rights held in Vienna in 1965, were opposed by Professor Egon Schwelb of the Yale Law School and one of the foremost authorities on the international protection of human rights. He voiced fears of the danger of "fragmentation of international action for the protection of human rights, and artificial creation of parochialism under the pseudonym of regionalism" and stated that to create "some seven or eight worlds with a host of sub-worlds" is a "nightmare [which] should be unambiguously discouraged." [96] He was joined by C. W. van Santen, a member of the Committee of Experts on Human Rights, who warned:

> Be careful, therefore, of any plans to further the creation of regional standards for human rights differing from the Universal Declaration by adaptation to regional circumstances and needs. Any watering down of the principles embodied in the Universal Declaration could do great harm.
>
> The point to be made in any propaganda for the Strasbourg achievement [i.e. the European Convention] should be its more extensive legal force and its enforcement machinery, not its regional character; the first is a virtue, the latter only a practical proposition, admissible and excusable merely in regard to its merits *above* the Universal Declaration. Any regional declaration especially adapted to regional needs and not having great legal force will do irreparable harm to the realisation of the United Nations Universal Declaration of Human Rights.[97]

This debate shows the dilemma confronting the international protection of human rights today. As Professor Schwelb said, "The ideal of the *one world* which was *en vogue* 20 years ago was clearly an illusion and we have to live with the bipolarization between East and West and—in economic matters—between North and South." [98]

The International Covenants on Human Rights

The authors of the Universal Declaration of Human Rights considered its adoption only the beginning of a more effective worldwide protection of human rights. The resolution proclaiming the Declaration contained a request from the General Assembly that the Economic and Social Council ask the Commission on Human Rights to continue to give priority to the preparation of a draft covenant on human rights, as well as a draft measure of implementation. Even before the Universal Declaration was adopted, there had been three committees of the Commission on Human Rights preparing drafts intended to constitute an International Bill of Human Rights: a Draft Declaration of Human Rights, a Draft

Covenant on Civil and Political Rights, and the project of implementation. Reminiscing about the memorable session of the Commission on Human Rights at Geneva in December 1947, Professor Norman Bentwich (representative of the United Kingdom who has been associated with the work of the Commission since 1947) outlined the hopeful aspirations of its members at that time, which unfortunately did not materialize:

> In those days of innocence we believed that the declaration and the covenant would be adopted by the General Assembly in a year or two, and we were convinced also that the individual or the group should have a right of petition claiming that there had been some violation or denial of human rights set out in the covenant. Already at that time a proposal was put forward by the representative of France, M. René Cassin, for the appointment of an Attorney-General of the United Nations for Human Rights who would sift the complaints and bring those that were serious before some organ of implementation. Then after that year there followed a period of set-back and some years ago the United States delegate proposed a programme for action which was an euphemism of inaction and study. Now, however, the American delegation and many other countries support, as a proposal, the appointment of a High Commissioner for Human Rights of the United Nations, who would deal with the thousands of petitions that are sent today to the Secretariat each year and which are just filed and catalogued but no action is taken on them.[99]

In 1952 the General Assembly decided that the Commission should draft separate covenants on civil and political rights and on economic, social and cultural rights that would include treaty obligations of the signatory States to respect and protect the rights and freedoms of the individual.[100]

Inasmuch as the Universal Declaration had laid down principles and standards instead of establishing the legal obligations of the States, it was expected that the adoption of the covenants by the General Assembly and the ratification by the Member States of the United Nations would make the Universal Declaration effective. This hope did not materialize because of the general reluctance of the States to commit themselves to more than a declaration of principles, and to subject their acts to the permanent control of some international agency.

Although both the Covenant on Civil and Political Rights and the one on Economic, Social, and Cultural Rights were adopted on December 16, 1966, by the unanimous vote of more than 100 nations,[101] ratifications were slow. As of August 8, 1967, 14 signatures to the two Covenants had been filed, but none of the 35 ratifications needed for effectiveness had been received.[102] The uncertainty about how long it will take for the instruments to become effective minimizes the importance of the fact that when they were adopted by the General Assembly, despite absences from the vote, all the States abstaining or absent when the Universal Declaration had been adopted, with the exception of South Africa, voted for the Covenants.[103]

Mrs. A. Luini del Russo, one of the most knowledgeable American students of human rights, has made an objective critical analysis of the Covenants:

> The present Covenants, which will come into force three months after ratification by 35 states, will not provide any international procedural redress to individuals, either before a tribunal or before any adjudicating body empowered to hear the case or pass on any allegation of Human Rights violations. The effort to reach a compromise has whittled away the effectiveness of the original proposal to a point of illusory consistency. The issue of Human Rights has remained a purely political question to be settled by sovereign States only; thus, it is still fraught with emotional charges and deprived of the impassive atmosphere of legal proceedings.
>
> The preambles to both Covenants not only refer initially to the principles proclaimed in the Charter and to the ideals laid down in the Declaration, but close with a novel reference to the involvement of the individual in the Human Rights struggle: "Realizing that the individual, having duties to other individuals and the community to which he belongs, is under a *responsibility to strive for promotion and observance of* the rights recognized in the present Covenant. . . ."
>
> The language would be of extraordinary importance in a theoretical sense, as to the recognition of the relevance of the individual to international law, were it not for the fact that, in practice, according to the provisions of the Covenants, he is still abandoned to his sole efforts in the fulfillment of such new duty.

In the Covenant on Economic Social and Cultural Rights the contracting parties merely commit themselves "to take steps . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including the adoption of legislative measures." Not only will this Covenant, when effective, not be self-executing, but it will entail a mere initiation of progressive steps leading in the future to the recognition and protection of the rights defined in the Covenant. Developing countries are even held to a lower degree of compliance, as they will be permitted to "determine to what extent they would guarantee the economic rights . . . to nonnationals." The only firm obligation of ratifying states will be to submit to the Economic and Social Council reports on progress achieved. No remedy is provided for a breach of the Covenant.

The other Covenant, on Civil and Political Rights, does expressly commit each member state "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant" and to take steps to conform its legislation to the implementation of the Covenant. This inclusion among "individuals" of nationals, stateless and aliens truly recognizes the direct interest of international law in man *qua* man. However, after the detailed definition of protected rights, the Covenant again limits institutional control to the establishment of an elective eighteen-member Human Rights Committee to which the States undertake to submit reports on the measures adopted to implement the principles of the Covenant.

Only two optional measures are contemplated to provide some much needed control. Under Article 41, if at least ten States parties to the Covenant declare that they recognize such competence, the Committee may have the power to receive States' "communications" as to the breach of obligations under the Covenant by another State party who has also submitted such a declaration. But in that event, the Committee's function would be merely to receive both States' submissions, attempt a friendly settlement at a meeting *in camera* and thereafter prepare a report on the results reached. If no settlement is reached the Committee may, with the consent of the States concerned, appoint an *ad hoc* Conciliation Commission of five members to consider the matter, attempt a solution and report its findings to the Committee on questions of fact relevant to the issues and its views on the possibility of a friendly solution. The individual has no access to any international body under this provision.

The optional protocol appended to the second Covenant is the only measure in both treaties which contemplates a direct recourse by the individual to the Human Rights Committee, although any legal term such as "petition" or "application" has been deleted and the neutral word "communication" is used. The Committee shall examine *in camera* the communications. There is no provision for adjudication of the dispute or for specific remedies. The end result of the Committee's investigation will be limited to the forwarding of views to the State and the individual concerned, and to the inclusion of the matter in the annual report to the General Assembly on all of the activities and functions entrusted to it.[104]

Furthermore, although the Covenants are essentially "a restatement of the provisions of the Universal Declaration through the medium of a convention," [105] some of the "inalienable rights" included in the Universal Declaration do not appear in the Covenant on Civil and Political Rights. Conspicuously absent are the right to own property and protection against its arbitrary deprivation, provided by Article 17 of the Universal Declaration.[106] In noting these omissions in the draft of the Covenants, Professors Myres S. McDougal and Gerhard Bebr commented:

Some protection of individual claims to resources may be necessary to protect other freedoms in a world of increasing governmentalization, centralization, concentration, and bureaucratization, and it should not be impossible to draft an article which would both protect the individual against arbitrary confiscation and yet permit community "nationalization" in appropriate instances.[107]

They further pointed out "that neither Covenant contains provisions, as did the Universal Declaration of Human Rights, for protection of nationality or freedom to change nationality, or for political asylum." [108] Another notable omission was the right of an individual to petition his own government.

While these inalienable rights, part of the traditional heritage of the Western democracies, have been sacrificed for the sake of compromise with socialism, a new human right—the right of self-determination—has been included in both Covenants.[109] McDougal and Bebr say of this innovation:

One perhaps unfortunate inclusion in both Covenants is the amorphous Article 1, on self-determination, which purports to give to "all peoples and all

nations" the "right of self-determination, namely the right freely to determine their political, economic, social and cultural status," and adds that the "rights of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources." In absence of a clear definition of peoples and of recognition that there are community responsibilities that transcend varying anachronistic indicia of "nations," deference to this vague doctrine can do much harm to the cause of a world order in which individual freedoms are secure, and the appropriateness of including such a doctrine in a Covenant defining individual freedoms is highly questionable.[110]

Finally, the fact that neither Covenant contains a clause permitting a signatory to denounce a part of the Covenant may provide an additional motive for their nonratification. As Stanley A. de Smith has pointed out, "Few states with serious minority problems would genuinely subscribe" to the vague proposition that all peoples have the right of self-determination. Taking away the right of denunciation from both the above-mentioned international instruments could only aggravate the situation.[111]

The Outlook

There can be no doubt that promotion, protection, and enforcement of human rights are paramount aims of world society and are indispensable for peace and security throughout this planet. Although the once fashionable phrase regarding the right to the pursuit of happiness is no longer used to denote the right of an individual to rise to the position or station in life he deserves, all these so-called human rights actually contribute to what our ancestors so wisely called the right to the pursuit of happiness. What is now called human rights actually delineates the dignity of man. Pope John XXIII clearly recognized the representation of this ideal in the Universal Declaration of Human Rights when he stated in his Encyclical *Pacem in terris* that

> the document represents an important step on the path toward the juridical-political organization of the world community. For in it, in most solemn form, the dignity of a person is acknowledged to all human beings; and as a consequence there is proclaimed, as a fundamental right, the right of free movement in the search for truth and in the attainment of moral good and of justice, and also the right to a dignified life, while other rights connected with those mentioned are likewise proclaimed.[112]

After all, the listing of basic rights and fundamental freedoms will never be exhaustive: some of them will rise on the scale of values, while others will lose their present importance. It is to be hoped that before long the international promotion of human rights will be effectively implemented by providing the aggrieved individual with some remedies of international scope. That is, if some of his rights are violated, he will be accorded the right of petition to some impartial, international, semi-judicial, or judicial agency, such as the European Commission of Human Rights or the European Court of Human Rights, which merely by declaring his petition admissible would mobilize public opinion to exercise pressure on the State concerned and thus induce the latter to right the wrong. Though such development may be slower in one area than in another, this will not detract from the importance of effective enforcement of human rights as a goal for future generations.

Thus, the implementation of the broad principles of the Universal Declaration of Human Rights and Fundamental Freedoms of December 10, 1948, appears at present to be possible only on a regional basis. The most advanced solution is provided by the European Convention on Human Rights and the practice of the European Human Rights Commission and the European Court of Human Rights.

Incorporation of the broad principles of the Universal Declaration or of the European Convention on Human Rights into the constitutions of the new States is not necessarily conducive to an effective protection of human rights if the constitutions are in fact alien to the young nation and if the human rights cannot be enforced internationally. A more effective enforcement of human rights and fundamental freedoms by national, regional, and international semi-judicial or judicial institutions depends on the raising of the cultural and economic level of the population, in particular in the new States or underdeveloped countries. It is useless to promote human rights

My very dear and antient Friend. Monticello Jan. 29. 17.

I learnt from your last letter, with much affliction, the severe and singular attack of your health which has lately sustained; but it's equally singular and sudden restoration confirms my confidence in the strength of your constitution of body and mind, and my conclusion that neither has received hurt, and that you are still ours for a long time to come. we have both much to be thankful for in the soundness of our physical organisation, and something for self-approbation in the order and regularity of life by which it has been preserved. your preceding letter had given me no cause to doubt the continued strength of your mind; and, were it not that I am always peculiarly gratified by hearing from you, I should regret you had thought the incident with mr Delaplaine worth an explanation. he wrote to me on the subject of my letter to you of Jan. 9. 1816 and asked me questions which I answer only to one being. to himself therefore I replied 'say nothing of my religion; it is known to my god and myself alone. the evidence before the world is to be sought in my life. if that has been honest and dutiful to society, the religion which has regulated it cannot be a bad one.' it is a singular anxiety which some people have that we should all think alike. would the world be more beautiful were all our faces alike? were our tempers, our talents, our tastes, our forms, our wishes, aversions and pursuits cast exactly in the same mould? if no variety existed in the animal, vegetable, or mineral creation, but all were strictly uniform, catholic and orthodox, what a world of physical & moral monotony would it be! these are the absurdities into which those men who usurp the throne of god, dictate to him what he should have done. may they, with all their metaphysical riddles, appear before that tribunal with as clean hands and hearts as you and I shall. there, suspended in the scales of eternal justice, faith and works will shew their worth by their weight. God bless you and preserve you long in life & health.

Charles Thomson esq.

37257

Th: Jefferson

Letter from Thomas Jefferson to Charles Thomson, dated January 29, 1817. In the Jefferson Papers at the Library of Congress.

and representative democracy as long as the economic and social conditions indispensable to their maintenance are not present. Otherwise no covenant or convention, however elaborate and detailed, can provide effective protection against violations of human rights, especially because their contents and scope vary from country to country, as they do from one epoch to another.

The ultimate objective and ideal goal in the international protection of human rights is universality. However, regionalism is indispensable, at least during the transitional period when conciliation and compulsory jurisdiction on an optional basis and on a regional basis appear to be the formulas most likely to bring progress and when universality looms far away as a utopian vision. Regionalism reflects the wide diversity of human nature and to disregard it actually means losing contact with reality. "It is a singular anxiety which some people have that we should all think alike," wrote Thomas Jefferson in a letter to Charles Thomson.[112] Should not we too heed those words with respect to the international protection of human rights?

NOTES

[1] For details see Victor Ehrenberg, *Der Staat der Griechen* (2d ed. Zürich, 1965).

[2] Maurice Cranston, *Human Rights To-day* (London, 1962), p. 9.

[3] Urs Peter Ramser, *Das Bild des Menschen im neuern Staatsrecht* (Winterthur, 1958), p. 49.

[4] Rudolf Laun, *Die Menschenrechte* (Hamburg, 1948), p. 10.

[5] Henry Steele Commager, *Documents of American History*, 7th ed. (New York, 1963), p. 104.

[6] Gaius Ezejiofor, *Protection of Human Rights under the Law* (London, 1964), p. 4–5. See also the discussion of human rights (p. 43–44) in *A Glossary of Political Terms*, edited by Maurice Cranston (London, 1966).

[7] Evan Luard, "Conclusions," *The International Protection of Human Rights*, edited by Evan Luard (New York, 1967), p. 305.

[8] Obed Y. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (The Hague, 1966), p. 186–187. See also the United Nations volumes entitled *Yearbook on Human Rights*. The one for 1946 contains provisions concerning human rights in force in each country on December 31, 1946, and later volumes contain reports on recent human rights developments in each country, as a rule supplied by its government; they also have sections on pertinent international agreements.

[9] C. Wilfred Jenks, "The Scope of International Law," *British Year Book of International Law*, 1954 (London, 1956), p. 33.

[10] Myres S. McDougal and Gerhard Bebr, "Human Rights in the United Nations," *American Journal of International Law* (cited hereafter as AJIL), 58:603–641 (July 1964).

[11] Ibid., p. 640–641.

[12] Ibid., p. 641.

[13] Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston, 1966), p. 71.

[14] Ibid., p. 239.

[15] *Yearbook of the United Nations*, 1948–49 (New York, 1950), p. 535–537.

[16] Roy P. Basler, editor, *Collected Works of Abraham Lincoln* (New Brunswick, N. J., 1953), vol. 2, p. 405–406.

[17] John P. Humphrey, "The UN Charter and the Universal Declaration of Human Rights," *The International Protection of Human Rights*, edited by Evan Luard (New York, 1967), p. 46.

[18] The Charter of the United Nations, Art. 62, par. 2, provides that the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observation of human rights and fundamental freedoms for all."

[19] Ezejiofor, *Protection of Human Rights*, p. 78–79.

[20] Ibid., p. 80–81.

[21] *Yearbook of the United Nations*, 1948–49. The official text of the Declaration is on p. 535–537 (New York, 1950). See also the United Nations publication *Human Rights; a Compilation of International Instruments of the United Nations* (New York, 1967).

[22] The following eight countries abstained: The Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, the Ukrainian SSR, the Union of South Africa, the USSR, Yugoslavia (*Yearbook of the United Nations*, 1948–49, p. 535).

[23] *Department of State Bulletin*, 19:751 (1948).

[24] *Yearbook of the United Nations 1948–49*, p. 535.

[25] Ezejiofor, *Protection of Human Rights*, p. 86.

[26] *Department of State Bulletin*, 19:751 (1948).

[27] Hersch Lauterpacht, "The International Protection of Human Rights," in Académie de Droit International, *Recueil des Cours* (Paris, 1949), vol. 70, p. 101.

[28] Hersch Lauterpacht, "The Universal Declaration of Human Rights," *British Year Book of International Law*, 1948, p. 371.

[29] Hersch Lauterpacht, *International Law and Human Rights* (New York, 1950), p. 419.

[30] Lauterpacht, "International Protection," p. 95–96.

[31] The text of these conventions may be found in a publication prepared by the Division of Human Rights of the United Nations Secretariat, *Human Rights; a Compilation of International Instruments of the United Nations* (New York, 1967).

[32] C. Wilfred Jenks, "Hersch Lauterpacht—the Scholar as Prophet," *British Year Book of International Law*, 1960, p. 65.

[33] Heribert Golsong, "Implementation of International Protection of Human Rights," in Académie de Droit International, *Recueil des Cours* (Leyden, 1966), vol. 110, p. 17. See also René Cassin, "Twenty Years After the Universal Declaration; Freedom and Equality," *Journal of the International Commission of Jurists*, 8 (no. 2): 1–16 (December 1967); and Louis B. Sohn, "The Universal Declaration of Human Rights—a Common Standard of Achievement? The Status of the Universal Declaration in International Law," *Journal of the International Commission of Jurists*, 8 (no. 2): 17–26 (December 1967).

[34] Egon Schwelb, *Human Rights and the International Community: the Roots and Growth of the Universal Declaration of Human Rights, 1948–1963* (Chicago, 1964), p. 96. See also his "Protection of the Right of Property of Nationals Under the First Protocol to the European Convention on Human Rights," *American Journal of Comparative Law*, 13:518–541 (autumn 1964).

[35] Egon Schwelb, "The Influence of the Universal Declaration of Human Rights on International and National Law," *Proceedings of the American Society of International Law* (Washington, 1959), vol. 53, p. 219–222. Mr. Schwelb cites such examples as the Special Statute for Trieste of 1954 and the Franco-Tunisian Convention of 1955, in which Tunisia granted to all residents of its territory the rights and freedoms proclaimed in the Declaration.

[36] A. H. Robertson, "The European Convention on Human Rights," *The International Protection of Human Rights*, edited by Evan Luard (New York, 1967), p. 126.

[37] Sir Humphrey Waldock, "Human Rights in Contemporary International Law and the Significance of the European Convention," *The European Convention on Human Rights* (London, 1965; British Institute of International and Comparative Law, International Law Series no. 5), p. 1–23.

[38] Waldock, "Human Rights," p. 15.

[39] Charles G. Fenwick, "International Law: The Old and the New," AJIL, 60:482 (July 1966).

[40] Charles G. Fenwick, *International Law*, 4th ed. (New York, 1965), p. 151–152. See also C. Wilfred Jenks, "Work, Leisure and Social Security as Human Rights in the World Community," *Journal of the International Commission of Jurists*, 9 (no. 1): 49–58 (June 1968).

[41] Ibid., p. 152 (note 67).

[42] U.N. Doc., A/Conf. 32/5, June 20, 1967.

[43] U.N. Doc., A/Conf. 32/5/Add. 1, January 23, 1968.

[44] Vol. 14, p. 411–536, 545–646.

[45] Vol. 11, p. 257–623.

[46] Vol. 53, p. 268–365.

[47] A list of the seminars and the documents containing reports on them appears in *Measures Taken Within the United Nations in the Field of Human Rights* (U.N. Doc., A/Conf. 32/5, June 20, 1967), p. 165.

[48] *European Convention on Human Rights; Collected Texts—Convention Européenne des Droits de l'Homme; Recueil des Texts* (4th ed. [n.p., n.d.]), Published by the Council of Europe. This text is up to date as of Sepember 1, 1965. The text as it read in May 1967 is published in Ian Brownlie's *Basic Documents in International Law* (Oxford, 1967), p. 194–219.

[49] A. H. Robertson, "The European Convention on Human Rights," p. 102, 128.

[50] For a more detailed discussion of the framework within which these and other European organizations operate see Johannes Klesment, Domas Krivickas, Armins Rusis, and Ivan Sipkov, "The European Organizations; Law and Structure," QJLC, 21:298–326 (October 1964). For a survey of the activities of the Council of Europe see A. H. Robertson, "The Contribution of the Council of Europe to the Development of International Law," *Proceedings of the American Society of International Law*, 1965, vol. 59, p. 201–211.

[51] Golsong, "Implementation of International Protection of Human Rights," p. 52.

[52] C. H. M. Waldock, "The European Convention for the Protection of Human Rights and Fundamental Freedoms," *British Year Book of International Law*, 1958, p. 356.

[53] *A Buckler for Your Rights* (Strasbourg, 1963), p. 12.

[54] Golsong, "Implementation of International Protection," p. 62.

[55] Andrew Martin, "Human Rights and World Politics," *Yearbook of World Affairs*, 1951 (London, 1951), p. 39.

[56] Viktor Liebscher, "Austria and the European Convention for the Protection of Human Rights and Fundamental Freedoms," *Journal of the International Commission of Jurists*, 4 (no. 2):282 (summer 1963).

[57] Golsong, "Implementation of International Protection," p. 57–58. However, a European Social Charter was signed by Member States of the Council of Europe on October 18, 1961, supplementing the European Convention on Human Rights with respect to securing the enjoyment of social rights. For further information see Peter Papadatos, "The European Social Charter," *Journal of the International Commission of Jurists*, 7 (no. 2):214–242, (winter 1966); Hellmut Georg Isele, *Die Europäische Sozialcharta* (Wiesbaden, 1967), p. 53–72; A. H. Robertson, "The Contribution of the Council of Europe to the Development of International Law," *Proceedings of the American Society of International Law*, 1965, vol. 59, p. 207.

[58] For the complete text of the Convention, including the protocols, see Brownlie's *Basic Documents*, p. 194–219.

[59] Gordon L. Weil, "The Evolution of the European Convention on Human Rights," AJIL, 57: 805–806 (October 1963).

[60] Liebscher, "Austria and the European Convention," p. 293.

[61] Articles 20–23 of the European Convention on Human Rights.

[62] Articles 24–25.

[63] Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxemburg, the Netherlands, Norway, Sweden, the United Kingdom. See A. Luini del Russo, "International Law of Human Rights: A Pragmatic Appraisal," *William and Mary Law Review*, 9:754 (spring 1968), note 21.

[64] A. H. Robertson, "Application of the European Convention of Human Rights," *International and Comparative Law Quarterly*, 16:1140 (October 1967). For a comparison of U.S. Supreme Court cases involving constitutional rights with the actions of those responsible for interpreting and applying the European Human Rights Convention in cases involving the rights of persons accused of crimes, see Clovis C. Morrison, Jr., "The Rights of the Accused Under the United States Constitution and the European Human Rights Convention," *Wisconsin Law Review*, 1968:192–209.

[65] Article 26 of the European Convention on Human Rights. For an excellent commentary on Article 26 and a survey of questions connected with the "local remedies rule" incorporated in the European Convention see Heinz Guradze, *Die Europäische Menschenrechtskonvention . . . Kommentar* (Berlin, 1968), p. 217–225.

[66] Rule 44 of the Commission's Rules of Procedure.

[67] Rule 45. See also Denys P. Myers, "The European Commission on Human Rights," AJIL, 50: 949–951 (October 1956); A. B. McNulty and Marc-André Eissen, "The European Commission of Human Rights: Procedure and Jurisprudence," *Journal of the International Commission of Jurists*, 1 (no. 2): 198–219 (spring-summer 1958); Gordon L. Weil, "Decisions on Inadmissible Applications by the European Commission on Human Rights," AJIL, 54:874–881 (October 1960); and François Monconduit, *La Commission Européenne des Droits de l'Homme* (Leyden, 1965).

[68] Stanley Hoffmann, "Implementation of International Instruments on Human Rights," *Proceedings of the American Society of International Law*, 1959, vol. 53, p. 239. The early practice of the court has been described by Gordon L. Weil in his article "The Evolution of the European Convention on Human Rights," AJIL, 57: 816–821 (October 1963).

[69] Ibid., p. 810.

[70] Ibid., p. 821.

[71] As Hoffmann said in his article on "Implementation of International Instruments," p. 239, "if the Commission fails to achieve a friendly settlement, it transmits its report to the Committee of Ministers, and if the case has not been brought to the European Court within three months, the Committee decides (by a two-thirds vote) whether there has been a violation of the Convention and what measures should be taken. The case can be brought before the Court not only by one of the states concerned, but by the Commission."

[72] Weil, "The Evolution of the European Convention," p. 820.

[73] Weil, "Decisions on Inadmissible Applications," p. 879.

[74] Weil, "The Evolution of the European Convention," p. 827.

[75] Weil, "Written Communication; How Significant and Effective Is the European Convention on Human Rights?" *Human Rights in National and International Law*, edited by A. H. Robertson (Manchester, 1968), p. 345–346.

[76] Egon Schwelb, "Documentation on the Working of the European Human Rights Machinery," AJIL, 58: 442 (April 1964).

[77] *Yearbook of the European Convention on Human Rights,* 1957 and 1958, vol. 2, Foreword and p. 174, as quoted by Schwelb (see preceding footnote).

[78] Charles G. Fenwick, *International Law,* 3d ed (New York, 1948), p. 191.

[79] Gerhard Bebr, "Regional Organizations: a United Nations Problem," AJIL, 49: 168 (April 1955).

[80] For an overall survey of the Bogota Conference see Charles G. Fenwick, "The Ninth International Conference of American States," AJIL, 42: 553–567 (July 1948); and Josef L. Kunz, "The Bogota Charter of the Organization of American States," AJIL, 42: 568–589 (July 1948).

[81] Charles G. Fenwick, "The Inter-American Regional System: Fifty Years of Progress," AJIL, 50: 27–28 (January 1956).

[82] Resolution 30, *Final Act, Ninth International Conference of American States, Bogota, Colombia, March 30–May 2, 1948* (Pan American Union, 1948), p. 38. The text is also printed in AJIL, Supplement of Official Documents, 43: 133–139 (1949).

[83] Fenwick, "The Ninth International Conference," p. 563.

[84] Josef L. Kunz, "Present-Day Efforts at International Protection of Human Rights: A General and Critical Introduction," *Proceedings of the American Society of International Law,* 1951, vol. 45, p. 114.

[85] Fenwick, "The Ninth International Conference," p. 563.

[86] Donald T. Fox, in his "Doctrinal Development in the Americas: From Non-Intervention to Collective Support for Human Rights," *New York University Journal of International Law & Politics,* 1:44–60 (April 1968), says that "The preamble of this Charter-ordained document recognizes that although the protection of human rights which American States provide in their domestic laws was appropriate under existing conditions, they should strengthen this protection in the international field as conditions become more favorable."

[87] Resolution VIII, Part 1, Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, Aug. 12–18, 1959, OEA/SER.C/II.5, as quoted by Fox, "Doctrinal Development in the Americas," p. 36.

[88] For an analysis of the Draft Inter-American Convention on Human Rights see Ezejiofor, *Protection of Human Rights,* p. 137–141.

[89] The resolutions of particular legal interest of the Second Special Inter-American Conference are reproduced in AJIL, 60:445–461 (April 1966), among them Resolution XXII entitled "Expanded Functions of the Inter-American Commission on Human Rights" (p. 458–460).

[90] Fox, "Doctrinal Development in the Americas," p. 54–55.

[91] Durward V. Sandifer, "Human Rights in the Inter-American System," *Howard Law Journal,* 11:508–526 (spring 1965).

[92] Fox, "Doctrinal Development in the Americas," p. 55–57.

[93] Roy S. Lee, "The Colloquium on Central and Latin Regional Organizations, Ditchley Park, July 1–3, 1966," AJIL, 61:93–95 (January 1967).

[94] Fox, "Doctrinal Development in the Americas," p. 51–52, note 28. See also José A. Cabranes, "Human Rights and Non-Intervention in the Inter-American System," *Michigan Law Review,* 65: 1147–1182 (April 1967); and *International Organization in the Western Hemisphere,* edited by Robert W. Gregg (Syracuse, 1968).

[95] Jean-Flavien Lalive, "The Protection of Human Rights Within the Framework of Existing Regional Organizations," *Human Rights in National and International Law,* edited by A. H. Robertson (Manchester, 1968), p. 336–337.

[96] Schwelb's remarks, *Human Rights in National and International Law,* p. 355–356.

[97] Santen's remarks, *Human Rights in National and International Law,* p. 358–359.

[98] Schwelb's remarks, p. 355.

[99] Norman Bentwich's remarks, in International Law Association, *Report of the Fifty-Second Conference, Held at Helsinki . . . 1966* (London, 1967), p. 746–747.

[100] For details on the arguments advanced in favor of separation of these two sets of rights see Ezejiofor, *Protection of Human Rights,* p. 90–91. The text of the two Covenants appears in Brownlie's *Basic Documents,* p. 138–174.

[101] Frank C. Newman, "Natural Justice, Due Process and the New International Covenants on Human Rights: Prospectus," *Public Law . . . Incorporating the British Journal of Administrative Law,* winter 1967, p. 275.

[102] John Carey, "Procedures for International Protection of Human Rights," *Iowa Law Review,* 53: 306, note 72 (October 1967).

[103] C. Wilfred Jenks, *Law in the World Community* (London, 1967), p. 122.

[104] A. Luini del Russo, "International Law of Human Rights: A Pragmatic Appraisal," *William and Mary Law Review,* 9:751–753 (spring 1968).

[105] Jenks, *Law in the World Community,* p. 122.

[106] For an analysis of the legislative history of this provision see Justino Jiménez de Aréchaga, "The Background to Article 17 of the Universal Declaration," *Journal of the International Commission of*

Jurists, International Year for Human Rights, 8 (no. 2): 34–39 (December 1967).

[107] McDougal and Bebr, "Human Rights in the United Nations," AJIL, 58:626 (July 1964).

[108] Ibid., p. 623.

[109] Articles 1 of both Covenants have identical wording. See AJIL, 61:861–862 and 871 (July 1967).

[110] McDougal and Bebr, "Human Rights in the United Nations," p. 622–623. For an earlier assessment of the self-determination doctrine see Clyde Eagleton, "Self-Determination in the United Nations," AJIL, 47:88–93 (January 1953). He states (p. 93): "Self-determination is a noble ideal, and worth working for . . . But the criteria established must be based upon justice and upon common sense, and little respect has been shown to either in the current debates. It is not merely the people concerned, but the community of nations, which has an interest; reckless application of the principle could easily lead to great danger for the community of nations."

[111] Stanley A. de Smith, "Book Review," *The New York University Journal of International Law and Politics,* 1:136 (April 1968).

[112] Peter Riga, *A Guide to Pacem in Terris for Students* (Glen Rock, N.J., 1964), p. 107.

[113] Holograph letter in the Thomas Jefferson Papers, vol. 209, folio 37257, in the Manuscript Division, Library of Congress.

As this issue of the *Quarterly Journal* goes to press, word has come of the award of the Nobel Peace Prize to René Cassin, a principal author of the Universal Declaration of Human Rights. Mr. Cassin, who was Vice Chairman of the United Nations' Commission on Human Rights when the Declaration was adopted, later succeeded Mrs. Franklin D. Roosevelt as Chairman. He has been a member of the European Court of Human Rights since 1959 and, since 1965, its President.

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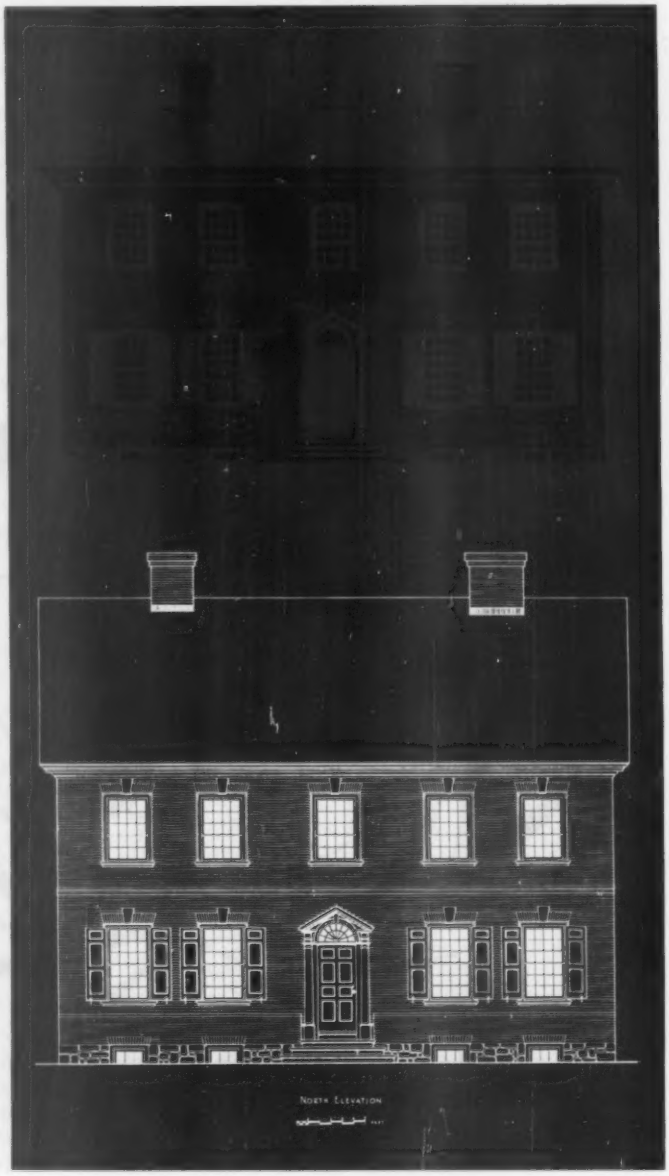
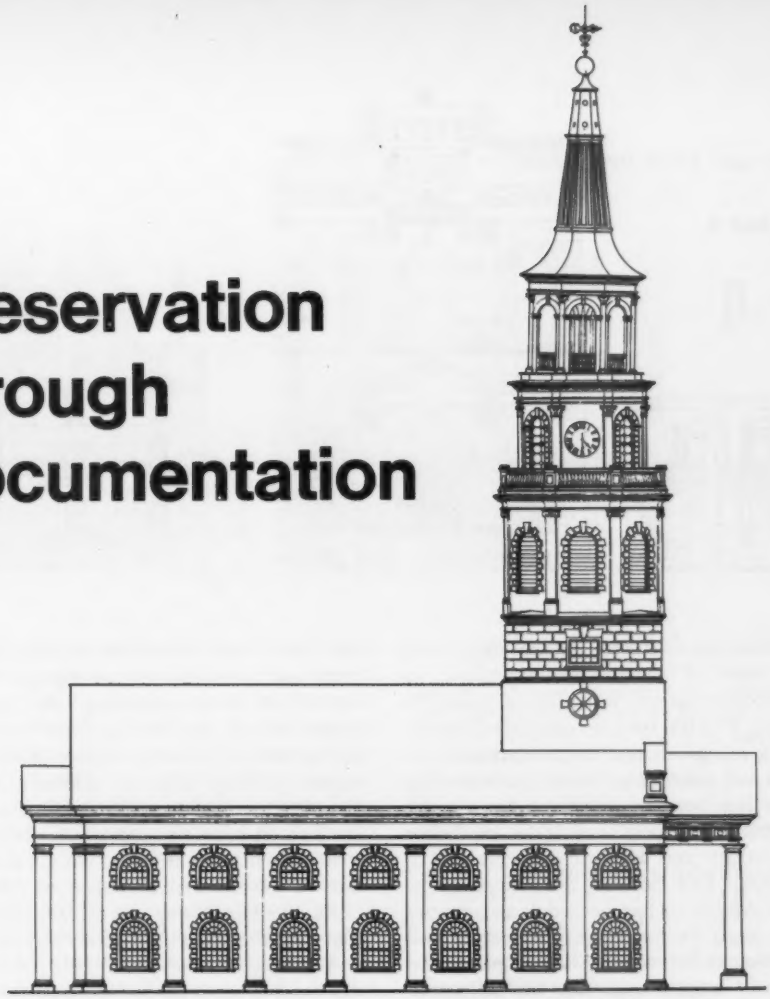
Preprints of this section (pages 273–288) are available for 25 cents each from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Rockford (PA–368), ***in Lancaster, Pa., was built about 1794 as the country residence of Gen. Edward Hand. An Adjutant General during the Revolutionary War, General Hand later was appointed by Washington to a post of Inspector of Revenue. The property was acquired by the Rockford Foundation in 1961 and has been restored for use as a museum. Photo by Jack E. Boucher, April 1965.***



Preservation through Documentation



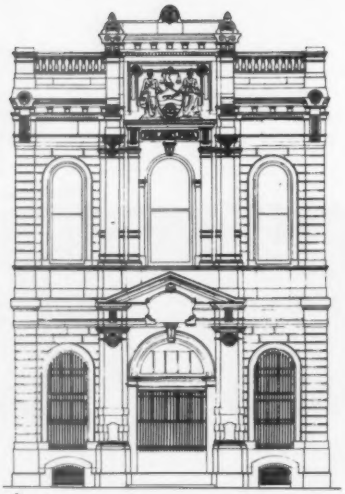
1. LC–DRA HABS SC–62, sheet 7

Since the Historic American Buildings Survey was started in 1933, public awareness of the value of the study and preservation of historic architecture has evolved from general indifference to a widespread concern for the past, which is reflected in important Federal legislation, the Historic Preservation Act of 1966. No matter how frequently the values of that past may be questioned, we return to it again and again in search of a dignifying, demanding guide to the present and the future, enriching both.

Usually neither individuals nor organizations choose their 35th anniversary as the moment to make a retrospective survey. More generally accepted landmarks are 25, 50, and 100 years. For HABS, however, this is an appropriate moment to hold a major national exhibit for it seems to have completed its formative period, in which it pioneered in setting up standards for gathering and preserving architectural documentation, and is now ready to assume a more urgent and significant role.

Already HABS has realized and far exceeded the intent and visions of its founders. Even with the modest resources traditionally allocated to historical studies, the record of achievement is impressive. Over 13,000 structures have been recorded with 30,000 meas-

2. LC–DRA HABS LA–64, sheet 3



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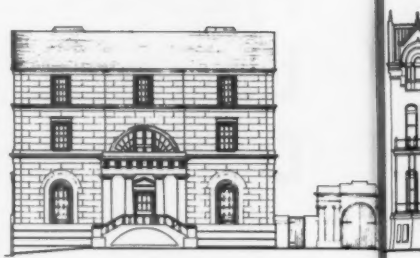

4.

ured drawings, 40,000 photographs, and 10,000 pages of written documentation, to form one of the largest collections of its kind in the world. This has been accomplished despite economic recessions and major national and international upheavals. The active recording program has been administered by a small permanent professional staff under the Office of Archeology and Historic Preservation of the National Park Service; the American Institute of Architects has assisted in an advisory capacity since the program's inception; and the Division of Prints and Photographs at the Library of Congress maintains the collection. During the last fiscal year this division filled orders from the public for more than 8,000 reproductions. The proven popularity and usefulness of the program, as well as the role HABS has played in educating the public, indicate not only how much has already been accomplished but also point to the future needs of the project.

It is now obvious that to ensure that all records can be reproduced quickly and effectively for public use and purchase and that the full potential of the HABS collection may be realized, new archival techniques must be utilized. However, the more efficient and effective retrieval of existing data is not the only major problem which presents itself. America has always been notable, and notorious, for the speed with which the appearance of its cities and even villages has changed through demolition and rebuilding. As large-scal urban renewal programs and the engulfing of old enclaves in suburban sprawl accelerate this tendency, HABS faces the dilemma of trying to prepare an adequate record for future generations. It must also record the monumental structures that are the most conspicuous products of the modern architectural movement.

All these problems are of such dimensions that even the possibilities offered by computers and photogrammetry, so vividly illustrated in this exhibit, seem barely adequate for the job that must be done. The exhibit that opened at the Library of Congress on September 26, 1968, and that is briefly summarized in these few pages, is not only a tribute to the traditional methods of recording—measured drawings, detailed photographs of individual structures, and laboriously researched architectural and historical reports—but also overwhelming proof of the need to update and accelerate these methods.

The two introductory panels of the exhibit seek to deal with these problems, to explain how they have been solved in the past and to suggest that there is great urgency for much more to be done in the immediate future if we are to safeguard our manmade environmental patrimony. Included in the seven main

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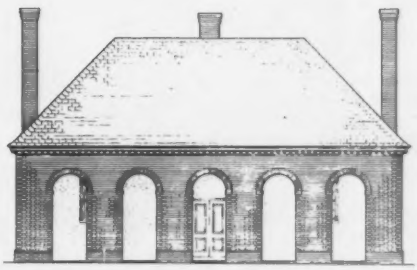
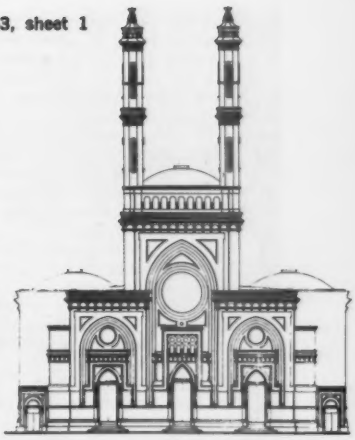
6. LC–DRA HABS VA–123, sheet 2



7. LC–DRA HABS O–643, sheet 1



sections are some of the finest and most representative graphic and photographic records in the collection. Several selections from each of these topical divisions form the basis for this "photographic essay." The scope of the Survey's records is so broad—from the prehistoric to the threshold of the present, from the Atlantic to Hawaii, from Alaska to Puerto Rico—that the most that these pages can do is to suggest the nature of the collection and to encourage a firsthand acquaintance with the actual recordings. This light preview leaves no doubt, however, of the significance of the program that the National Park Service started 35 years ago. Throughout these three and one-half decades the Survey has continued to be the most solid of foundations for the efforts to preserve either the memory and values of our past or the actual remains of that past. As a tool for the teacher, the scholar, the community leader, and the architectural and planning professions, and as a developer of public awareness of historic architecture and pleasure in it, the Historic American Buildings Survey has in fact been one of the most significant of our educational programs.

S. K. Stevens
Chairman of the Advisory Council on Historic Preservation

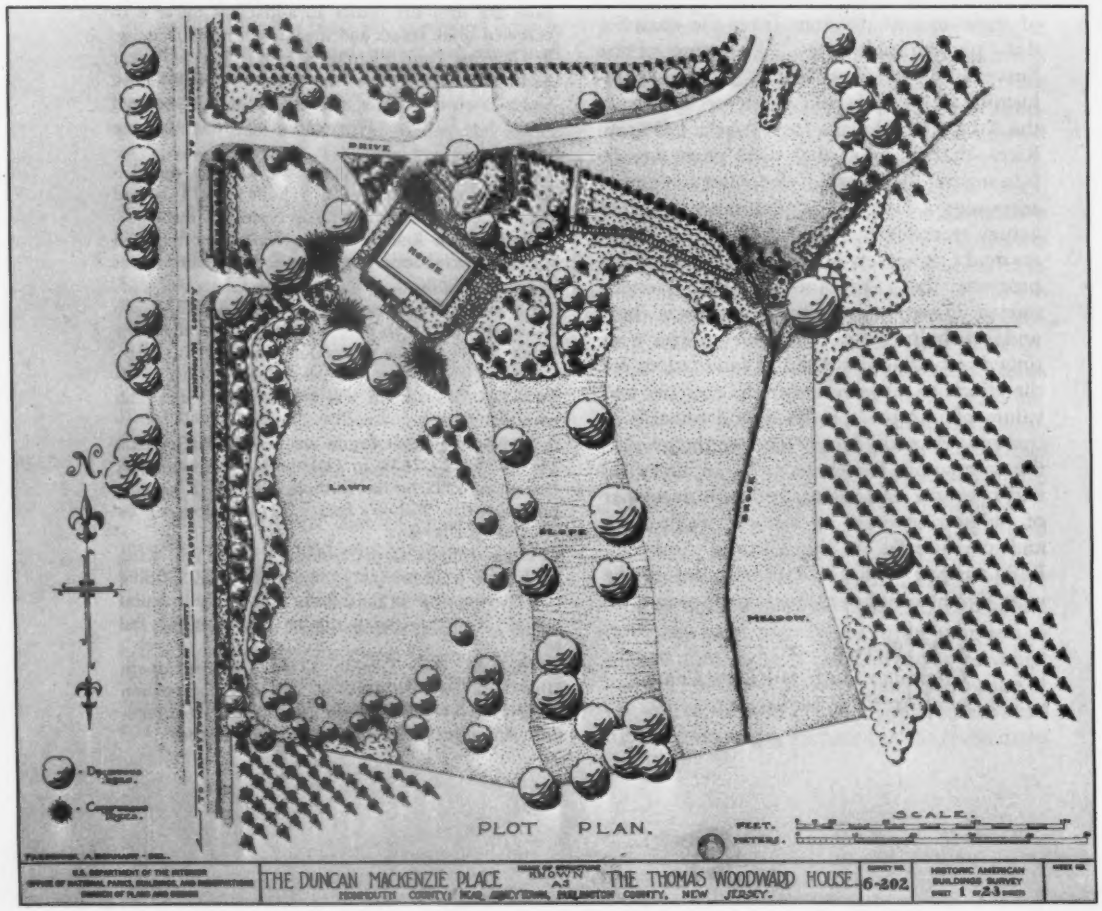
1. St. Michael's Episcopal Church (SC–62), built in 1751–62, is the oldest extant church in Charleston, S.C. A notable example of colonial architecture, the structure boasts an audacious tower with corbeled brick stages and ingenious timber framing.
2. Chretien Point Plantation house (LA–64), near Sunset, La., resembles in plan the well-known Shadows-on-the-Teche, a property of the National Trust for Historic Preservation. It was built in 1831.
3. The Philadelphia Trust, Safe Deposit and Insurance Company (PA–1181), built in 1873–74 and demolished in 1959, was fairly typical of the vigorously modified Renaissance Revival style often used for commercial houses in that era. The architect was James H. Windrim.
4. William Scarbrough House (GA–2127), in Savannah, Ga., is an outstanding example of the so-called Regency style of architecture. Built in 1818–19, it was designed by English-trained architect William Jay. Scarbrough was a prominent Savannah merchant.
5. Construction was begun on the Walter Gresham House (TEX–2103) in Galveston, Tex., in 1886. Bought in 1923 by the Catholic Church, it became known as the "Bishop's Palace." It was designed by Nicholas J. Clayton.
6. King William Court House (VA–123) in King William, Va., is probably the oldest public building in continuous use in that State. Built in the colonial period, it stands today unaltered except for the roof.
7. Isaac M. Wise Temple (O–643) in Cincinnati, Ohio, was built in 1863–65 by the congregation using it today—B'nai Yeshuran, mother congregation of Reform Judaism in the United States.

8. Noted for its glazed brickwork, Genesar (MD–24), near Berlin on the Eastern Shore of Maryland, is a fine example of Tidewater architecture of the late 17th and early 18th centuries.
9. The Woodward-MacKenzie House (NJ 6–202) in Monmouth County, N.J., built in 1735 and enlarged in 1780, was part of a fairly typical New Jersey farm complex of that time.
10. The beautifully carved, pedimented doorway is part of the Hammond-Harwood House (MD–251) at Annapolis, Md. Designed by William Buckland, it was built in 1773–74.
11. Typical of 17th-century Swedish log cabins in the Delaware River Valley is this one near Darby, Pa. (PA–135).
12. In marked contrast is the Samuel C. Demarest House (NJ–542), built about 1837 at Saddle River, N.J., in a traditional form used by the Dutch in New York and New Jersey.
13. The Chase-Lloyd House (MD–243) at Annapolis, Md., is notable for superb details such as this ceiling, added to it in the early 1770's, presumably by William Buckland.
14. Cliveden (PA–1184) was built in 1763–64 in Germantown, Pa., for Benjamin Chew, Chief Justice of Pennsylvania, and is one of the finest extant American Palladian houses.

8. LC–NEG HABS MD 24–BERL. V 2–4

Photo by D. H. Smith, 1940

9. LC–DRA HABS NJ 6–202, sheet 1



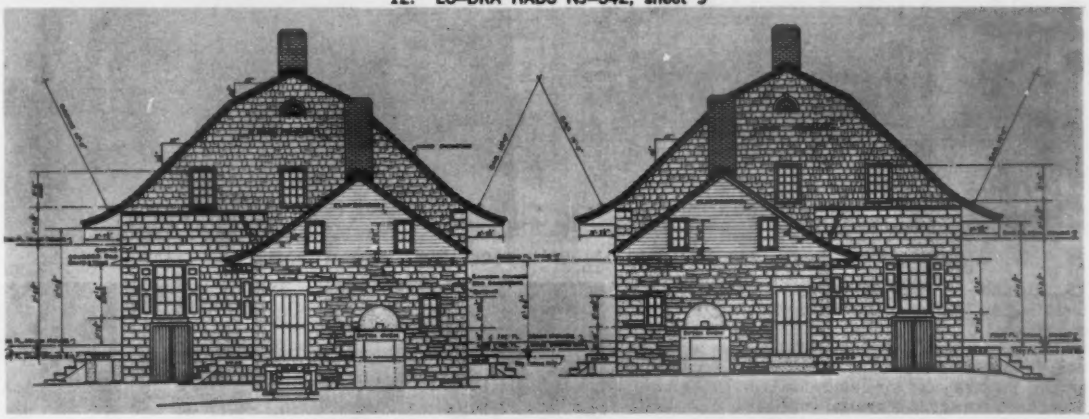
10. LC–NEG HABS MD 2–ANNA 18–15

Photo by Charles E. Peterson, 1940

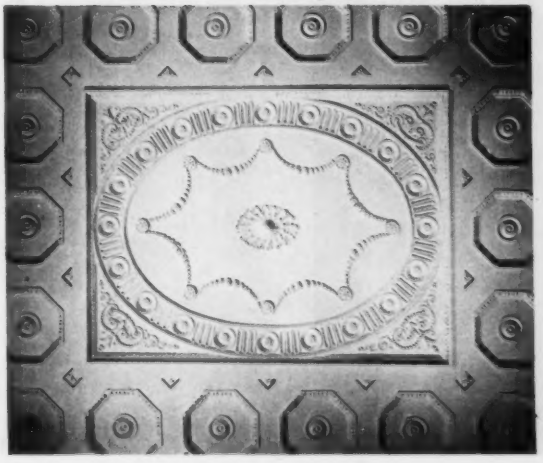
11. LC–NEG HABS PA 23–DARB. V 2–1

Photo by Ian McLaughlin, February 1937

12. LC–DRA HABS NJ–542, sheet 9



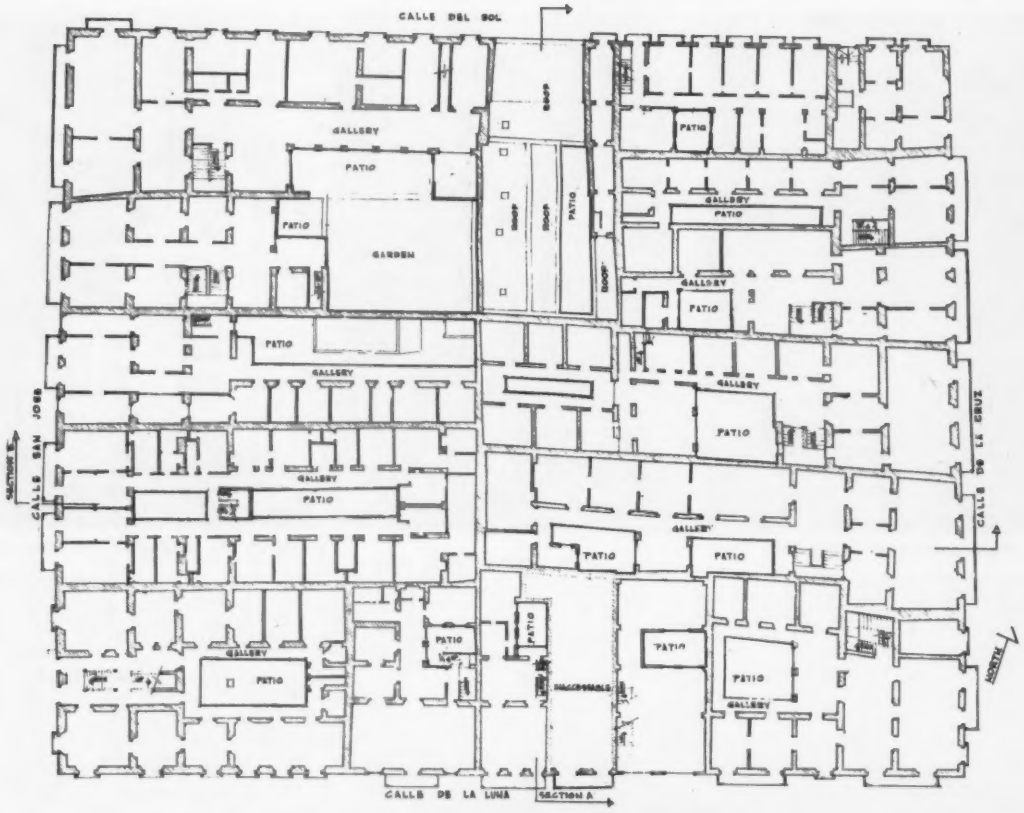
13. Photo by Jack E. Boucher, 1960



14. Photo by Cortlandt V. D. Hubbard, 1968

The Spanish Tradition: From the Atlantic to the Pacific

15.



16.

17.

15, 16, and 17. This historic zone (PR–61)—a block in San Juan Antiguo, Isleta de Juan, P.R.—is composed mostly of 18th- and early 19th-century buildings constructed as one- and two-story single-family houses. Shops and warehouses occupied ground floor spaces; the family lived on the main floor. Each house has a central courtyard. Balconies provide variety for otherwise plain neoclassic facades. Elaborate grille work, such as that at Calle San Jose 105 (PR–68), is found in the balconies at second- and third-floor levels. A building with decorative features typical of San Juan's dwellings is that at Calle San Jose 109 (PR–67). Its duplex plan, however, is exceptional and its mezzanine story uncommon for a building of the period. The builder and exact date of construction are unknown.

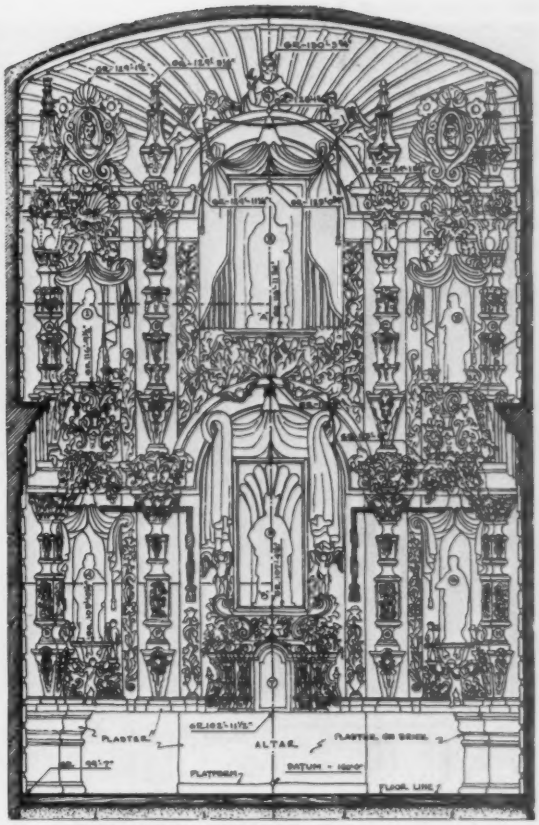
18 and 19. Mission San Xavier del Bac (ARIZ–13) was founded in 1700 on a site near Tucson, Ariz. As rebuilt by the Franciscans between 1784 and 1797, it has often been regarded as the finest example of mission architecture in the United States. The altar area, as shown in the photograph of the pulpit and in the line drawing, indicates the wealth of elaborate ornamentation.

20. Fort Matanzas (FLA 15–5), on Rattlesnake Island near St. Augustine, Fla., was built in 1742. Its first level is a gundeck 16 feet above ground; the second level is a 30-foot, two-story tower containing quarters and a powder magazine. Constructed of coquina, a native shellrock, Fort Matanzas was built by the Spanish to guard the south entrance to St. Augustine.

Photos by Jack E. Boucher, January 1967

18. LC–NEG HABS ARIZ 10– ——, 1–124

20. Photo by D. D. Dickensheets, 1940



19. LC–DRA HABS ARIZ–13, sheet 26

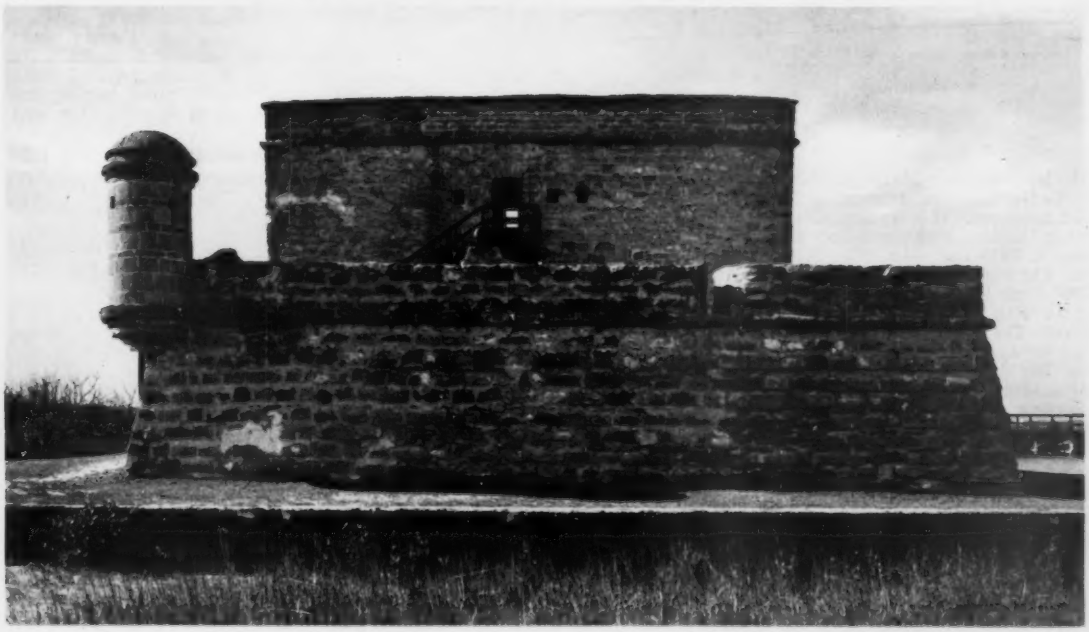


Photo by Jack E. Boucher, February 1965

The Early Republic and the Classical Revival

21.

Photo by Jack E. Boucher, May 1968

22.

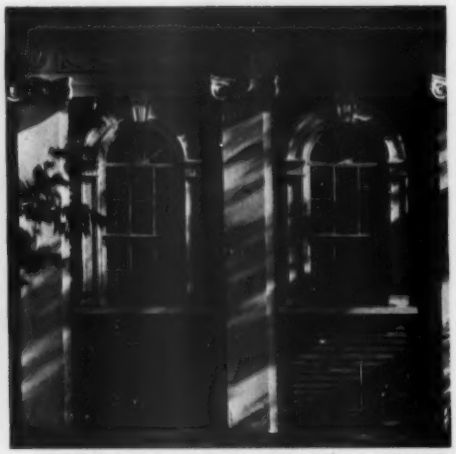


Photo by Cortlandt V. D. Hubbard, July 1966

23.

24.

Photo by Jack E. Boucher, April 1964

21. Jelliff-Schwarz House (CONN–290) is typical of the Greek Revival structures in the architecturally rich community of Southport, Conn. The two-story frame building, with a one-story Ionic portico, was built in 1839 and restored in 1966.

22. The Nantucket, Mass., Masonic Lodge (MASS–899), built in 1802, was one of the first buildings to break with the simple architectural style of the island. The rather elaborate classical details, both exterior and interior, are of wood.

23. The James Leadbeater House (VA–641), in Alexandria, Va., was built about 1810 and is an excellent example of the residential architecture of the period. The design suggests that additional, similar houses were anticipated on lots to the north and south. The lots were never built upon and at present form the gardens.

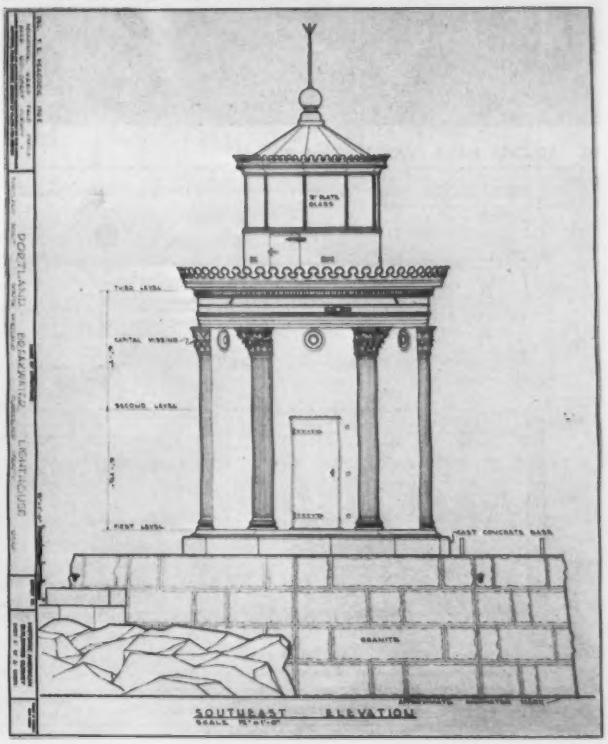
24. Decatur House (DC–16), on Lafayette Square in Washington, D.C., was designed by Benjamin Henry Latrobe in 1818 for Stephen Decatur. Near the White House, it has served as the home of numerous dignitaries and has been a social center of the Nation's Capital. It is now the headquarters of the National Trust for Historic Preservation.

25. Photo by Jack E. Boucher, January 1963

25. Oakleigh (ALA–47), in Mobile, Ala., a raised cottage-type house with Greek Revival details, was built in 1833 by slave labor.
26. The original portion of Francis Macy House (MASS–931) in Nantucket, Mass., was built in 1790. It was moved to the rear of the property and made an ell of the mansion which was built in 1836.
27. Portland Breakwater Lighthouse (ME–112), South Portland, Maine, built in 1855, is a cylindrical cast-iron tower, modeled on the Choragic Monument of Lysicrates. It was abandoned in 1943.

26. Photo by Cortlandt V. D. Hubbard, 1966

27. LC–DRA HABS ME–112, sheet 3



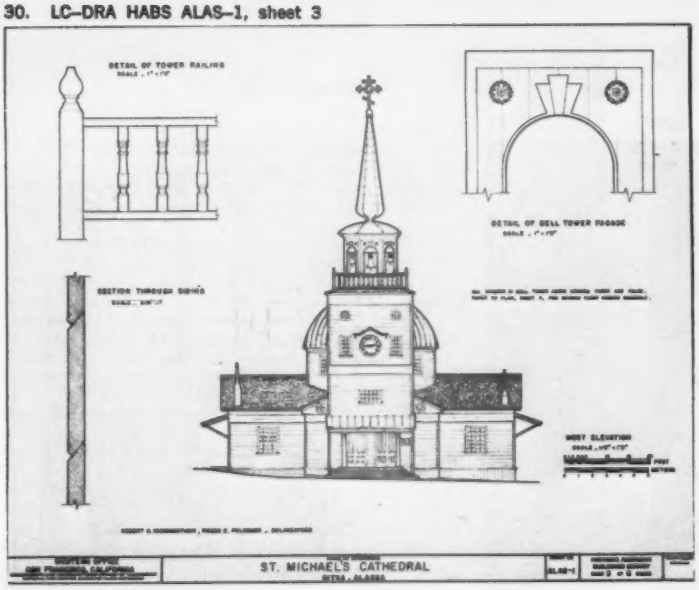
Folk and National Traditions in Architecture

28. Twin spiral staircases help make the Guest or Trustees House (KY–81), in Shakertown, Ky., one of the most graceful of Shaker buildings. The house was built in 1839.
29. Hampton's Ford Stage Station Barn (U–43), Collinston, Utah, was built in 1866. The station was an important stop in the old Overland Stage Route.
30. St. Michael's Cathedral (ALAS–1) in Sitka, Alaska, built in 1844–48, was a splendid example of Eastern Orthodox Church architecture in Alaska. Burned in 1966, it will be reconstructed from HABS drawings.
31. The Bishop Michael Portier House (ALA–37) stairway is an unusual example of a native American idiom. This home of the first Catholic bishop of Mobile, Ala., is a creole-type cottage built in 1829.
32. Government House (VI–42), St. Croix, V.I., is one of the largest surviving Danish buildings on the islands. Built about 1774, it is of interest because of the varied additions made in the late 18th and 19th centuries.
33. This worker's house (ALA–821) in Mobile, Ala., was probably built before the Civil War.
34. Kuenzi Barn (WIS–151), near Watertown, is one of the few remaining half-timbered barns in Wisconsin. Framed in oak with brick nogging, it was built about 1850 by German immigrants.

28. Photo by Jack E. Boucher, April 1963

29. Photo by P. Kent Fairbanks, August 1967

30. LC–DRA HABS ALAS–1, sheet 3



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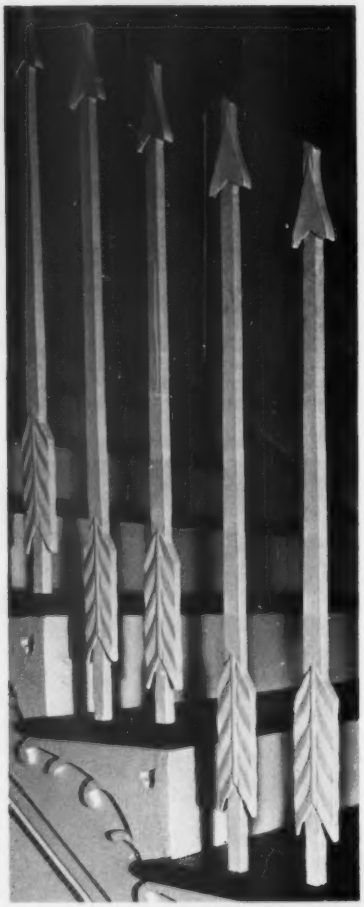
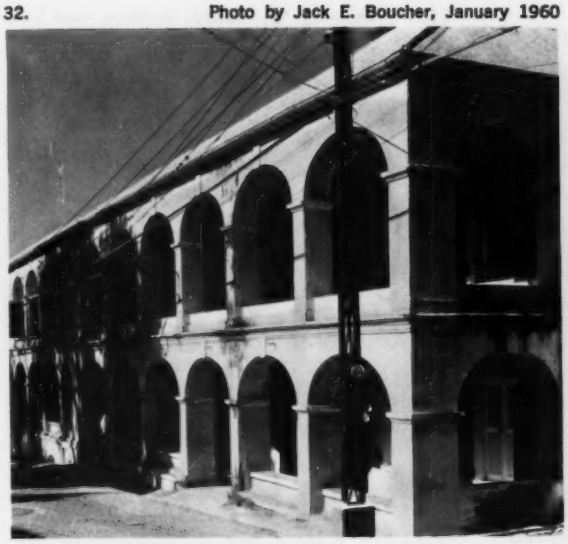


Photo by Jack E. Boucher, January 1963

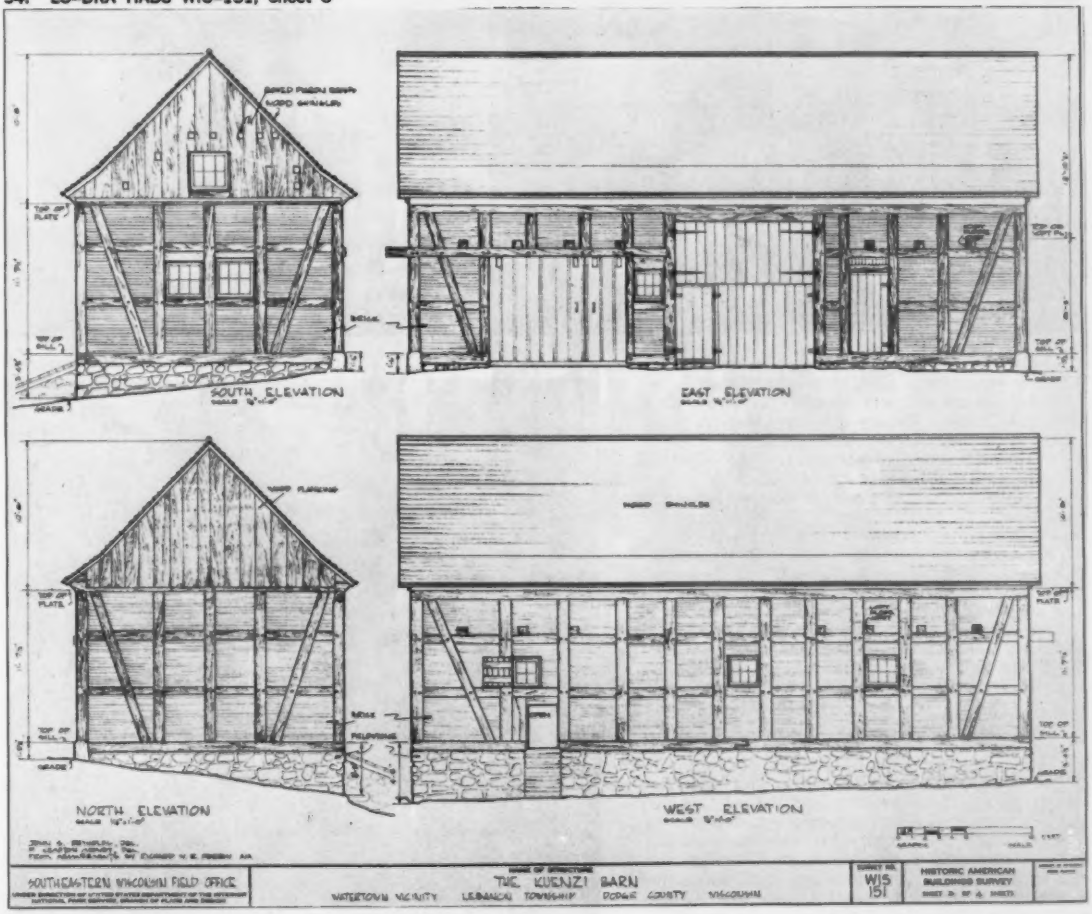
32. Photo by Jack E. Boucher, January 1960



33.

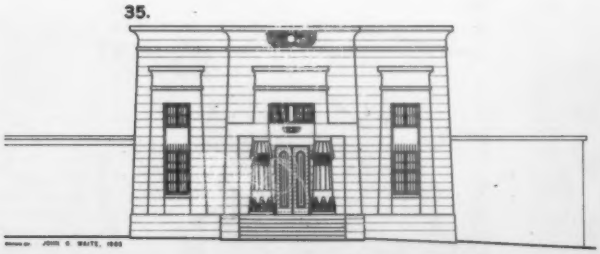
Photo by Jack E. Boucher, January 1963

34. LC–DRA HABS WIS–151, sheet 3



The Romantic Revival

35.



36. Photo by Jack E. Boucher, March 1963

37. Photo by Mrs. Rosalie McKenna, May 1968

38. Photo by Jack E. Boucher, May 1965

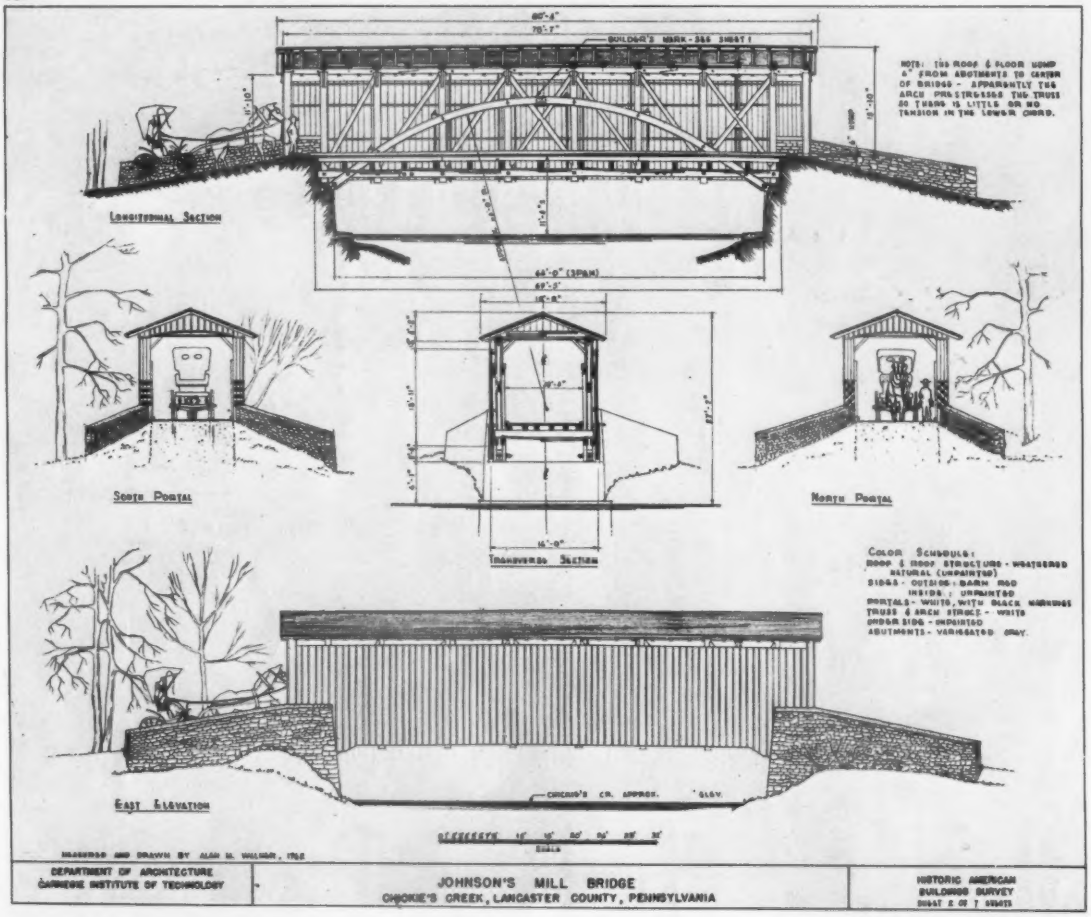
35. One of the most significant examples of Egyptian Revival architecture in the United States is the Philadelphia County Prison, Debtor's Wing (PA–1097), built about 1835. Architect Thomas U. Walter also designed parts of the U.S. Capitol.
36. The main elevation of Perry Block (NY–5443) in Binghamton, N.Y., is a notable example of a cast-iron facade in upstate New York. The structure was built in 1876.
37. Springside Cottage (NY–5489) in Poughkeepsie, N.Y., is one of the few extant houses that influential architect Andrew Jackson Downing designed for actual construction. Built in 1850–52, it is situated in a 45-acre park which he also planned. The cottage became the summer residence of Matthew Vassar.
38. St. Louis Roman Catholic Church (NY–5488) is the home of the oldest Roman Catholic congregation in Buffalo, N.Y. Constructed of brown Medina sandstone in the Gothic Revival style, it was designed in 1889 by the firm of Schickel and Ditmars.
39. The living room of Mar-A-Lago (FLA–195) reflects the elegance which makes this Mediterranean villa in Palm Beach one of the most magnificent mansions on Florida's east coast. Designed by Marion Sims Wyeth for Mrs. Marjorie Merriweather Post, the mansion combines Spanish, Venetian, and Portuguese styles. The interiors and decorative stones were designed by Joseph Urban. Mar-A-Lago was built in 1923–27 and still belongs to Mrs. Post.

39.

Photo by Jack E. Boucher, April 1967

Technology and the Building Arts: Engineering and Industry

40.



41.

Photo by Randolph Langanbach, 1967

42.

Photo by Martin Linsey, March 1966

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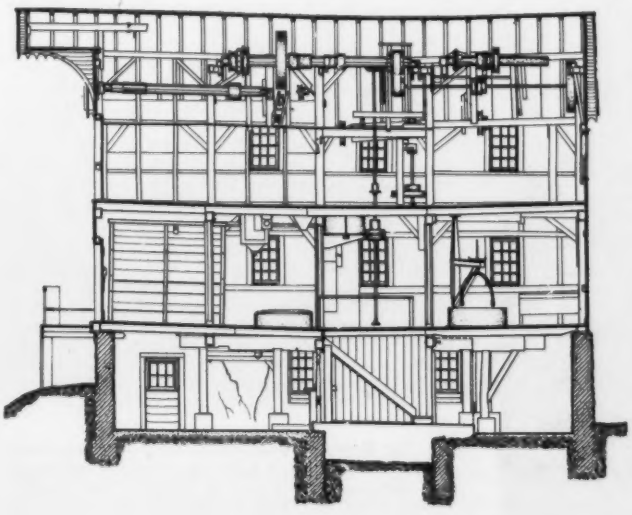


40. Spanning the 64-foot width of Chickie's Creek, Lancaster County, Pa., Johnson's Mill Bridge (PA–1182) is a Burr arch-truss, heavy-timber covered bridge typical of the 19th century. The builder was Elias McClennan.

41. Crown Mill, left, built in 1823, and Eagle Mill, right (MASS–1001), built in 1827, are joined by a brick arch constructed over Mumford River in 1851. They are prime examples of the independent mills that flourished in the first half of the 19th century in Blackstone River Valley, which is considered the cradle of the American textile industry.

42. A block long and five stories high, the Arcade (O–2119) in Cleveland, Ohio, joins two nine-story office buildings. Built in 1888–90 by the architects John Eisemann and George Horatio Smith, the techniques and materials reflect the rapid changes in high-building construction in the late 19th century.

43. Constructed in the early 1830's, the aqueduct over the Conococheague Creek in Maryland (MD–224) is one of the largest limestone aqueducts built to carry canalboats on the Chesapeake and Ohio Canal. The aqueduct is located near Williamsport.

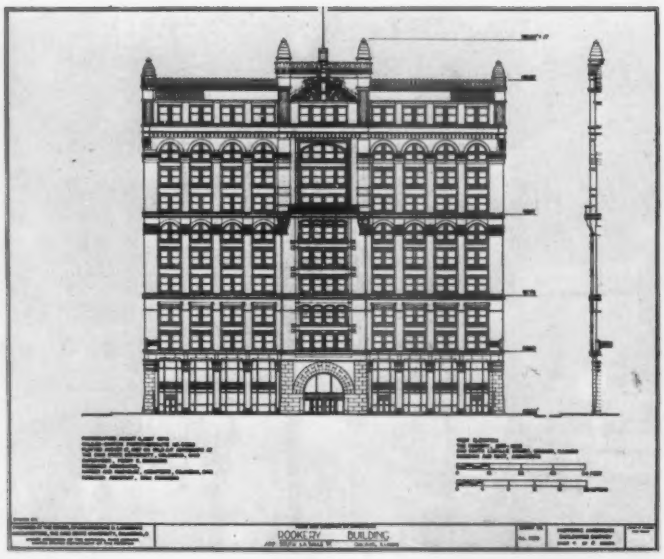
44. A grist mill in Pike County, Pa., Bushkill Mill (PA–1137) is a notable example of heavy-timber construction in the late 18th century.

The Rise of Modern Architecture

45.

Photo by Jack E. Boucher, May 1965

46.



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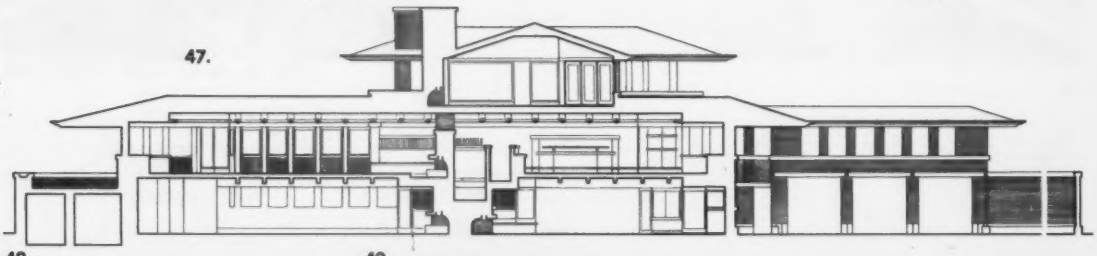

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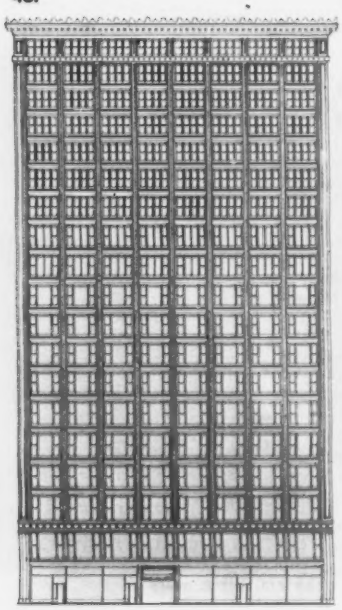

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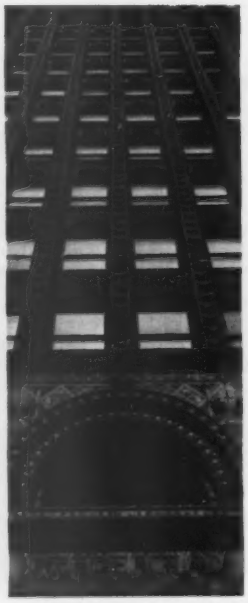

Photo by Boucher, 1965

45 and 49. The Prudential Building (NY–5487) in Buffalo, N.Y., built in 1894–95, is one of the finest designs of the architectural firm of Adler and Sullivan. Sullivanesque terra cotta ornamentation is featured in the 13-story, steel-framed structure.

46. The Rookery Building (ILL–1030), built in 1886–88 by the firm of Burnham and Root, was designated a Chicago Architectural Landmark in 1958. Built of stone and brick, with a cast-iron frame, the rectangular structure has 11 stories with a nine-bay front. The construction of the interior court walls—maximum glass area and narrow spandel strips—was later applied to the entire exterior walls of skyscrapers. The lobby was remodeled in 1905 by Frank Lloyd Wright.

47. The Frederick C. Robie House (ILL–1005), built in 1908–9 in Chicago, Ill., is one of Frank Lloyd Wright's greatest Prairie House designs. Described as "a home organized around a great hearth where interior space, under wide sweeping roofs, opens to the outdoors," the structure has been designated both a Chicago Architectural Landmark and a National Historic Landmark. It is built of brick and stone, with red tile roof, copper eaves, and oak woodwork.

48. The Republic Building (ILL–1004), originally the Strong Building, is a 19-story, steel-framed structure designed by the firm of Holabird and Roche. It was built in 1903–5 and was demolished in 1961.

U.S. GOVERNMENT PRINTING OFFICE : 1968 O—317-747

50. LC–NEG HABS ILL 16–CHIG. FIREPLACE Photo by Cervin Robinson, August 1963

This fireplace graces the entrance hall of the Ernest J Magerstadt House (ILL–1024) in Chicago. Built in 1906–8, the house is one of the finest works of George W. Maher, a "Prairie School" architect. Maher was influenced by Art Nouveau; the poppy motif seen in the side panels of the stained-glass mosaic is found throughout the house—in windows, ceiling borders, porch columns, even on the handles of the kitchen range.

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45.

Photo by Jack E. Boucher, May 1965

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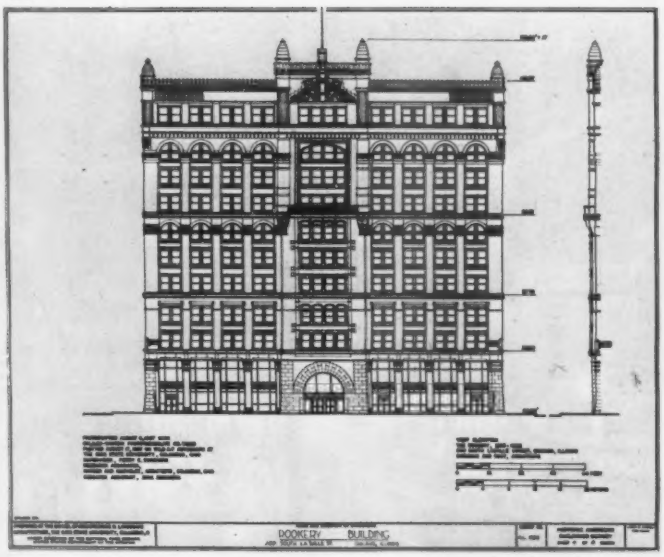

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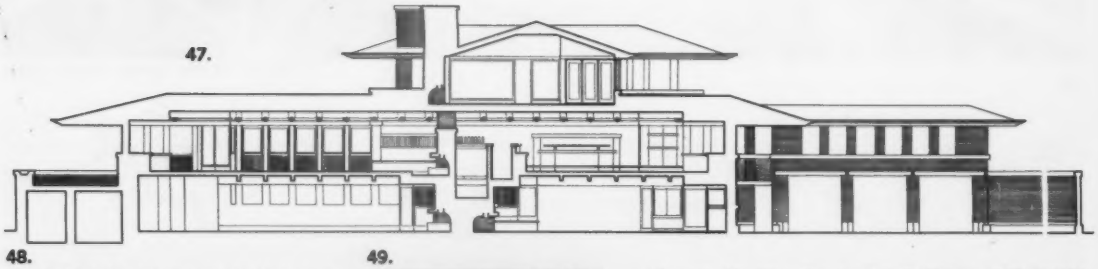

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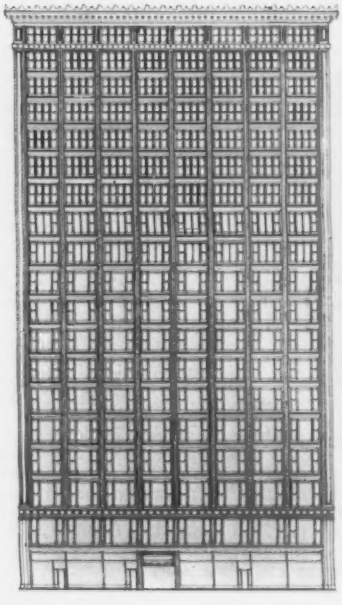

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318–298 O—68——4

COMMUNIST CHINESE LEGAL DEVELOPMENT

Reflected in the Country's Legal Publications

by TAO-TAI HSIA and DEBORAH MURRAY

The legal system of Communist China has been described by Chinese leaders as an instrument of simultaneous creation and destruction. According to the country's judicial theoreticians, the "people's democratic legal system" (*jen-min min-chu fa-chih*) expresses the will of the entire laboring class; thus it is empowered to serve as an instrument of Socialist construction. On the other hand, the legal system is supported by—in fact, is dependent on—the state's compulsory force, through which it is able to attack, suppress, and destroy enemies of the people. These two roles characterize the people's democratic legal system as an evolutionary, driving force.

The development of the legal system in Communist China has been erratic. Because it is continually involved in the progression of the class struggle, the system is constantly undergoing modification. This evolutionary movement accounts in part for the extreme fluidity of Communist Chinese law. In addition, one must be cognizant that the people's democratic legal system, along with the state apparatus in Communist China, is part of a superstructure that is supported by an economic base. As the base changes, the superstructure must also change. Thus, from the beginning of the People's Republic in 1949 through the current Great Proletariat Cultural Revolution, China's social-political fabric has been undergoing a prolonged period of transformation. The legal system and state apparatus, as component parts of the superstructure, have also been transitional in nature during this period. An examination of some of Peking's legal publications, selected as examples of the legal trends prevailing during

Tao-tai Hsia is Chief of the Far Eastern Law Division, and at the time this article was written Deborah Murray was an Editorial Research and Secretarial Assistant in the Far Eastern Law Division. The article is based largely on a paper entitled "Communist Chinese Legal Publications," read by Dr. Hsia at the conference on Chinese Communist Law: Tools for Research, held in Bermuda, May 1967, and sponsored by the Subcommittee on Chinese Law of the Joint Committee on Contemporary China of the American Council of Learned Societies and the Social Science Research Council.

various transitional stages, will facilitate an understanding of the erratic legal development in mainland China.

An exhaustive examination of legal publications is impossible because of the totalitarian nature of the Communist Chinese regime and its practice of making certain legal materials inaccessible to foreign researchers. Within these limitations, this article will consider legal publications, 1949–65, from the standpoints of quantity, type, and content.

Output of Legal Publications 1949 to 1965

From information in the available issues of China's two major national bibliographies—*Ch'üan-kuo tsung shu-mu* (National Bibliography of China) and *Ch'üan-kuo hsin shu-mu* (New National Bibliography of China)—figures are given below to show the annual totals of Communist Chinese legal monographs published during the years 1949 through 1965. Although several recent issues of *Ch'üan-kuo hsin shu-mu* are not available at this writing, it has been possible to make a valid general quantitative survey of legal publications of the Peking regime since it gained control of China.

From 1949 through 1952, annual production figures for all subject categories of Communist Chinese legal monographs were very low; in none of these years did the number of publications exceed 26, and in 1951, of the 26 works published, 11 were translations. (Almost all translations are from Russian.)

In 1953 there began a steady rise in the number of publications, reaching its peak during the years 1956–57, a period of relatively free expression known as "Hundred Flowers." Totals of legal monographs in all subject categories during the years immediately preceding and following Hundred Flowers, as well as for the duration of this short-lived period, are as follows: 1955—82 titles, including 36 translations; 1956—122 titles, including 75 translations; 1957—108 titles, including 55 translations; and 1958—83 titles, including 14 translations.

The Hundred Flowers period was initiated by Mao Tse-tung when he decided to assess public acceptance of the regime. Proclaiming a policy of greater freedom of expression—"Let a hundred flowers blossom, a hundred schools of thought contend"—he expected to evoke praise of the regime and perhaps mild criticism. The new policy, however, opened the floodgates to a wave of critical writings, with substantially fewer works in support of the regime. These relatively more scholarly and critical writings accounted for the greater part of the increase in legal monographs published in 1956 and 1957.

The unforeseen flood of criticism caused the Peking regime to withdraw the Hundred Flowers policy abruptly in mid-1957. Production dropped from 108 publications, including 55 translations, in 1957, to 83 publications, including 14 translations, in 1958, and 1959 shows a sudden fall to 26 publications with 11 translations. In 1960 only 10 legal titles were published, one of which was a translation. The year 1958 shows the least degree of decline because at this time the Party embarked on a policy of counter-criticism, i.e., it published anti-rightist works, considering this action tantamount to a direct condemnation of the works published during Hundred Flowers. Branding the critical works published during 1956–57 as "poisonous weeds" in the flower garden, the Peking regime removed them from circulation. The Party and the government since then have prohibited the publication of works expressing liberal or "tainted" views. This policy accounts, in part, for the steady decline in production of legal monographs since the Hundred Flowers period.

Although bibliographic information is not complete for the years 1961–65, available statistics show a continued drop in production: 1961—no information; 1962—four publications, including two translations; 1963—seven publications, including four translations; 1964—five publications; and 1965—two publications. Thus one assumes that, exclusive of the years 1956–57, the Peking regime has not encouraged, or tolerated, unrestricted publication of legal monographs nor has it made legal works easily accessible to foreigners.

In addition, production of legal monographs does not compare favorably with publication in the other subject fields listed in the Official

Classification Schedule adopted by the Library of the Chinese People's University. Legal publication figures exceed those in only five out of 19 fields for the years 1956 and 1958, while publications in the following subject categories outnumber those of state and law and legal science by the hundreds: economy, political economics, and economic policy; culture and education; literature; natural science; social science and political science; engineering and technology; and agriculture, animal husbandry, and fishery.

Presumably, both the totalitarian nature of the Peking regime and the fluid state of Communist Chinese law have presented deterrents to the quantity and quality of legal publications in Communist China. While the Chinese are no doubt anxious to display their achievements in fields where technological and economic progress are involved, they are understandably hesitant to publicize legal developments. This reluctance can be attributed in part to the fact that the political and legal fields are closely interconnected and interdependent. As a consequence of this political-legal alliance, illustrated by the propaganda slogan "Party policy is the soul of law," Communist Chinese legal studies in the hands of foreign researchers would expose certain political developments which the Chinese prefer to keep secret. As is characteristic of all totalitarian regimes, policy formulation in Communist China is highly secretive and involves only the highest Party and state officials; and because judicial affairs are so closely coordinated with internal political developments, a large percentage of them must also remain outside the realm of public scrutiny. Thus, the deterrents to legal authorship and legal publications which arise from the very nature of the Communist Chinese regime account for both the cautious approach taken by legal theorists in their writings and the scarcity of legal monographs of research value in mainland China today.

Types of Publications

On the whole, Communist Chinese legal publications fall into four categories—textbooks, mimeographed materials, works for mass consumption, and certificated publications.

During the Hundred Flowers period, textbooks concerning criminal law, civil law, constitutional law, and other facets of the legal field were written for classroom use in Chinese law schools. Well-known to researchers of Communist Chinese law is *Chung-hua jen-min kung-ho-kuo hsing-fa tsung-tse chiang-i* (Lectures on the General Provisions of the Criminal Law of the People's Republic of China), published in 1957. As this date indicates, the book was written in large part during Hundred Flowers and was published immediately after the liberalization period ended. Inasmuch as the political climate in which the book was written was unique in its encouragement of free discussion in a totalitarian state, this textbook expressed rather liberal views on the subject of criminal law in China. Shortly after the Hundred Flowers period ended, however, the original principal authors, whose names appeared in the previously published draft version but were removed from the formal edition, were condemned along with others as rightists, and their book was reportedly withdrawn from classroom use in 1958. Because this textbook has been translated into English by the Joint Publications Research Service of the U.S. Department of Commerce,[1] it has been heavily relied on by American students of Communist Chinese criminal law. It is interesting to note, however, that, judging from other Chinese materials available in this country, the book has never been quoted by Communist Chinese authors in their writings.

Another observation can be made concerning the authorship of Communist Chinese legal textbooks. Most legal work of this type is prepared through the collaborative efforts of a group, which may include members of a law school faculty, law students, and, most frequently, members of a teaching and research office, all of which are located in the country's academic institutions. This practice of collective authorship protects legal writers who wish to avoid both the possibility of committing an ideological error against the regime and having to defend their positions alone. Two examples of legal textbooks published

through cooperative efforts are: *Chung-hua jen-min kung-ho kuo hun-yin-fa chi-pen wen-t'i* (Basic Problems Concerning the Marriage Laws of the People's Republic of China), published in 1958 and written by more than 40 faculty members of the Office of Teaching and Research of Civil Law and law students at the Chinese People's University; and *Jen-min ssu-fa kung-tso shih wu-ch'an chieh-chi chuan-cheng ti jui-li wu-ch'i [k'o-hsüeh yen-chiu yüeh-chin ts'ung-shu]* (People's Judicial Work Is the Sharp Weapon of the Proletariat Dictatorship; Scientific Leap Forward Series), published in 1958 and written by all faculty members of the Office of Teaching and Research of Trial Law and law students at the Chinese People's University.

Most Chinese legal textbooks, however, have only limited value compared with the mimeographed materials which are used most frequently for classroom study. Because they are not printed, the mimeographed materials are easily revised and updated to reflect China's constantly changing political realities. Unfortunately, statistics concerning mimeographed legal works are not included in China's national bibliographies, nor are these materials made available to anyone outside Communist Chinese law schools. Therefore, one can only speculate on their content.

Available bibliographic information shows that a substantial quantity of the legal publications during 1949–65 consisted of simple pamphlets which were published and distributed at the provincial level. Written in peasant and worker vernacular, they sought to acquaint the masses with current developments in the judicial system and with newly promulgated laws, such as marriage law, land law, and the constitution.

Finally, the legal publications of greatest value to researchers of Communist Chinese law are the certificated publications. Teaching and research offices, which are organized within China's academic institutions according to major law subjects, are responsible for the compilation of a large number of these works. Certificated publications are designed for official use only and are accessible exclusively to certain authorized personnel, who must be issued certificates to obtain them. The severely limited distribution within Communist China herself suggests that they might contain unpublished laws and decrees or experimental legal policies which the Chinese Communists do not wish to reveal to their own masses, much less to foreign researchers.

Content of Publications

It is a characteristic of Communist states that Party dictates take precedence over the rule of law. In Communist China, however, this state of affairs has reached an extreme because the country possesses no codified law and Party dictates must play a larger role in order to fill the gap. Chinese Communists, in fact, continue to emphasize that "Party policy is the soul of law," giving a kind of license to the Party to determine what is lawful and unlawful, what is just and unjust, who is an enemy of the people and who is not. Party policy effects political changes and the law reflects these changes. Because Party policy takes shape with the changing stages of class struggle and is therefore variable, law too is an unstable, transitional force. Examples of this dialectical character of Communist China's legal system can be seen in various publications.

Generally speaking, the content of Communist Chinese legal publications before Hundred Flowers was less sophisticated and more dogmatic than that of works published during the liberalization period. During Hundred Flowers, however, Communist Chinese legal theorists gave new emphasis to the technical aspect of law. Most Chinese jurists agreed at this time that a continuity of law did in fact exist and that an examination of China's legal history would provide insight valuable to the formulation of a contemporary legal system suitable to the concrete conditions in China. This philosophy was reflected by the publication in 1957 of a bibliography of Chinese legal history, a work of special interest to law librarians. This book, entitled *Chung-Kuo fa-chih-shih ts'an-k'ao shu-mu chien-chieh* (Brief Introductory Bibliography of Reference Works on Chinese Legal History), compiled by Kuo-wu-yüan fa-chih-chü fa-chih-shih yen-

chiu-shih (Legal History Research Office, Bureau of Codification, State Council), and published by the Legal Press in Peking, is considered to be the most comprehensive bibliography of its kind ever produced within Communist China; and it is evidence of the efforts by Chinese jurists at that time to conduct a thorough study of their country's legal history. Up to the time of Hundred Flowers, the Party had urged disregard of the past, saying that it had no relevance to the present except for being one of the necessary stages through which an evolutionary state system must pass. This same view was resumed immediately after the Hundred Flowers period, and no further significant efforts have been made to continue the study of Chinese legal history.

In addition to instigating a study of the continuity of law, the enunciation of the Hundred Flowers philosophy represented a singular attempt on the part of the Chinese Communists to provide for free discussion in a totalitarian society. In May 1956, in an interpretive statement on Mao's speech to launch the freedom of expression policy, Lu Ting-yi, Director of the Propaganda Department of the Central Committee of the Party, said "we must praise the new society and positive people. But at the same time we must also criticize the old society and negative elements; we must praise what is progressive and criticize what is backward." [2] Although these words seem to anticipate both praise and criticism, in reality Mao was not prepared for the widespread dissatisfaction with his rule which was shown by a majority of the intelligentsia. He believed in the fundamental unity of the Chinese people and was convinced that his new programs of rural collectivization and nationalization of private industry would enhance this unity as well as further progress toward a Communist society. Thus, in issuing an invitation to the academic and artistic intelligentsia, which was later extended to the managerial and judicial elements, to speak freely about his regime, Mao anticipated an expression of approval of his people's democratic dictatorship and, therefore, vindication of his rule.

But contrary to Mao's expectations, there appeared more criticism than praise and in the end disunity rather than unity resulted. Legal theorists freely criticized the Party's practice of intruding into what they considered to be exclusive powers of the judicial organs. They were particularly disturbed at the Party's insistence on giving specific instructions to judges concerning the adjudication of individual cases. In addition, Chinese jurists were strongly critical of the government for its failure to adopt codes of civil and criminal law and procedure,[3] charging that the lack of a codified law in China prevented the establishment of a stable and just legal system. The Hundred Flowers period, then, giving vent to criticisms of the regime which had been building up for several years, found that dissatisfaction was largely focused on the more technical aspects of Communist Chinese law. The content of legal publications written during this period illustrates this.

The divisive effect of the Hundred Flowers policy on national unity, in contrast to the anticipated "strengthening of Party unity," and exposure of the weaknesses of the regime such as the so-called legal vacuum in Communist China, necessitated the abrupt withdrawal of this policy shortly after it was inaugurated. Criticism heretofore considered "constructive" was now labeled "poisonous" and emphasis on the technical aspects of law was gradually abandoned.

Bibliographic information on post-Hundred Flowers legal publications is incomplete. There is enough information, however, to make valuable observations. The content of these works, beginning with publications of the anti-rightist campaign launched in the latter part of 1957, shows increasing emphasis on ideological rather than technical aspects of Communist Chinese law. Writings again became burdened with propagandistic, ideologically oriented slogans. Many who had spoken out against Mao during Hundred Flowers were chastised for daring to criticize his policies, which were hailed in a Red Guard publication as "the peak of contemporary Marxism-Leninism, the supreme directives that are applicable everywhere on earth." [4] Therefore, writings regressed to pre-Hundred Flowers dogmatism. In fact, any expression of liberal views has not been tolerated during

the past 10 years, except for a slight respite in 1959–62 resulting from the "Great Leap Forward" debacle and from natural calamities.

It is apparent then that Communist Chinese legal publications relate to the contemporary political tenor of the Peking regime. When the Party creates a freer political climate, legal writers place more emphasis on technical aspects of the law, on the fundamental premises upon which the legal system is based. When the Party "normalizes" the political climate to its characteristic negation of free expression, however, Communist Chinese jurists must reorient their thinking to an officially approved ideological approach. Legal monographs, after all, must inculcate the current line of Chinese Communist ideology into the minds of the masses; therefore, concern with the technical aspects of law must be abandoned in deference to legal discussions of the latest Party directives. At these times legal publications become propagandistic and shallow in subject matter. This situation, however, is no reason to ignore Communist Chinese legal publications. On the contrary, a thorough examination of significant legal works often reveals developments in that country which are not described or even suggested in other types of source materials. These revelations are important contributions to an understanding of Communist China.

Newspapers and Other Periodicals

Communist Chinese newspapers and periodicals also illustrate developments in the legal system; and again, the generalization can be made that the newspapers and periodicals of greatest value to researchers are those published during the Hundred Flowers period.

Generally, newspaper legal literature can be divided into two categories: articles which report current developments in the legal field; and articles of more substantive content which are comparable to those found in Chinese law journals. One of the most important contributions to newspaper legal literature, often neglected by researchers, is the *Kuang-ming jih-pao* (*Kuangming Daily*), which devoted neglected by researchers, is the *Kuang-ming* (Political-Legal Biweekly). This legal publication was compiled by the Research Department of the Chinese Political-Legal Association and published from January to May 1957. All articles were of relatively scholarly nature and subjects ranged from the ideological importance of law—"Conquer the thinking of subjectivism; raise the quality of investigation of cases" by I-kuang in issue no. 9, April 15, 1957, page 3—to the technical aspects of law—"How the people's procuratorates of our country conduct trial supervision" by Chang Fu-lai, issue no. 2, January 15, 1957, page 3. In addition, the biweekly devoted 13 of its 54 articles to the subject of the inheritability of law, thus reflecting the general political-legal belief of the Hundred Flowers period that continuity of law exists and that Chinese legal history, therefore, should not be ignored. Several articles, in fact, concerned themselves with investigating possible contradictions between the class nature of law and the inheritability of law. The Political-Legal Biweekly was short-lived, published as it was near the end of the liberalization period.

Periodical legal literature presents invaluable reference material for researchers of Communist Chinese law because, on the whole, these articles are more scholarly than those published in Chinese daily newspapers.[5] In addition, periodical legal articles, being highly sensitive to the political climate, reflect vacillations in the Party's policy concerning judicial affairs.

Following are the titles of three government gazettes, seldom used by American researchers, but nevertheless important reference materials. *Chung-yang cheng-fa kung-pao* (Central Political-Legal Gazette) was published only during the years 1950 through 1954 and contained legal articles of research value as well as published texts of new laws and decrees. *Chung-hua jen-min kung-ho-kuo kuo-wu-yüan kung-pao* (Gazette of the State Council of the People's Republic of China), founded in 1954 as the probable successor to the Central Political-Legal Gazette, contains mainly published texts of decisions and directives issued by the State Council and subordinate bodies. *Chung-hua jen-min kung-ho kuo*

ch'üan-kuo jen-min tai-piao ta-hui ch'ang-wu wei-yüan-hui kung-pao (Gazette of the Standing Committee of the National People's Congress of the People's Republic of China) was founded in 1957 and is primarily concerned with reports of actions taken by the National People's Congress or its Standing Committee. All three publications would provide useful reference material for students of contemporary Chinese law.

The most well-known Communist Chinese legal periodical is *Cheng-fa yen-chiu* (Political-Legal Research), founded in May 1954. One issue (no. 1, 1962) described the journal as a "political-legal theoretical publication of the Chinese Political-Legal Association and the Institute of Law of the Chinese Academy of Sciences." Another of the journal's announcements, which concerned the soliciting of manuscripts, indicated that the articles in this publication were primarily concerned with explications and interpretations of the thoughts of Mao Tse-tung; statements of Marxist-Leninist theories of state and law; inculcation of the Chinese Communist ideology; and criticism of revisionism and of all enemies of Socialist construction. This journal accurately reflected the political climates which existed during and after Hundred Flowers, initially by publishing articles of relatively liberal and mildly critical nature during the relaxation period, and subsequently, by publishing the Party-instigated, anti-rightist works which condemned Hundred Flowers publications. It is one of the few law journals which survived post-Hundred Flowers condemnation. However, the quality of *Cheng-fa yen-chiu* began to deteriorate after Hundred Flowers and this deterioration became more marked once the Great Proletariat Cultural Revolution had begun in early 1966. The last two issues contain very little material which could actually be classified as "legal articles." Victimized by the Red Guard cultural revolutionary movement, this periodical reportedly suspended publication with its issue no. 2, 1966, after publication of 62 issues.

A "sister publication of *Cheng-fa yen-chiu*," also relatively unknown to foreign researchers, is entitled *Cheng-fa i-ts'ung* (Collected Political-Legal Translations). Published by the Chinese Political-Legal Association from 1956 through 1958, this journal included mostly translations of articles concerning political-legal studies conducted by the USSR and other socialist countries. Its title was changed to *Cheng-fa yen-chiu tzu-liao hsüan-i* (Selected Translations of Political-Legal Research Materials) in 1959 and less than a year later the journal became a certificated publication with an accordingly limited distribution.

One final legal periodical which merits attention is *Fa-hsüeh* (Jurisprudence), the second most important law journal in mainland China. It was published from June 1956 to September 1958, a time span which encompassed the entire Hundred Flowers period; consequently, the early issues reflect the relatively liberal attitude expressed by Chinese jurists at that time. Most of the pieces contained in these early issues emphasized the technical aspects of law, especially the connections between theory and practice and the inheritability of law. Contributing authors to this periodical were mostly professors from Shanghai and nearby areas; their writings therefore were somewhat sophisticated and of a more scholarly nature than those found in law journals published in other periods.

Since the end of the Hundred Flowers period, Communist China has experienced a steady decline in the number and a gradual deterioration in the quality of legal monographs and serials. This trend has been advanced by the continuation of Mao Tse-tung's Cultural Revolution, which has caused political upheaval and a resultant state of domestic chaos. Although it is to be expected that violent disturbance would cause an interruption of Communist China's often halting and irregular legal development, this particular interruption may not prove short-lived, nor its effect transitory, because it has been accompanied by purges of political figures. These purges have included a large number of top-ranking leaders of the Party and the government. A Japanese professor who visited mainland China in September–October 1967 reported that almost all prominent and influential jurists had come under severe criticism by the Maoists. Among the men he

named were: Yang Hsiu-feng, President of the Supreme People's Court; Wu Te-feng, President of the Chinese Political-Legal Association and Vice-President of the Supreme People's Court; and Chang Yu-yü, Director of the Institute of Law of the Chinese Academy of Sciences.[6] Although these men have not been formally dismissed from their posts, their reported criticism and the consequent condemnation and restrictions imposed on them have rendered them ineffectual in their official duties. Their political futures remain in question.

The recipient of the most virulent attacks by proponents of the Great Proletariat Cultural Revolution is Liu Shao-ch'i, identified in Communist Chinese newspapers and periodicals by the Maoist expression "China's Khruschev." Although Liu still retains his position as President of the People's Republic, he has been accused of many anti-Mao crimes, all of which were enumerated in a Red Guard document entitled *Ta-tao Liu Shao-ch'i—fan-ko-ming Liu Shao-ch'i ti i-sheng* [Overthrow Liu Shao-ch'i—the life of counterrevolutionary Liu Shao-ch'i], reprinted by Ching-kang-shan War Battalion of the No. 4 Hospital of the Municipality of Peking in May 1967. Perhaps the most serious accusation in this paper charges Liu with advocating an end of the class struggle, which could be considered by the Chinese Communists as tantamount to supporting preservation of the "capitalist exploitation system." This accusation stems in part from a speech presented by Liu to the Eighth National Congress of the Communist Party of China in September 1956. During his speech Liu made the following statement:

> In order to consolidate our people's democratic dictatorship, to preserve order for socialist construction and safeguard the people's democratic rights, and to punish counterrevolutionaries and other criminals, one of the urgent tasks facing our state at present is to begin the systematic codification of a fairly complete set of laws and to put the legal system of the country on a sound footing.
>
> . . . the period of revolutionary storm and stress is past, new relations of production have been set up, and the aim of our struggle is changed into one of safeguarding the successful development of the productive forces of society . . . and a complete legal system becomes an absolute necessity. All state organs must strictly observe the law, and our security departments, procurators' offices and courts must conscientiously carry out the system of division of function and mutual supervision in legal affairs.[7]

His emphasis on the absolute necessity of systematically codifying a complete set of laws and his expressed desire that all state organs be subjugated to the law have been construed by the Red Guards to mean that Liu advocates using law to shackle both the Party and the proletariat in their class struggle toward Communism.

Mao Tse-tung, on the other hand, who coined the slogan upon which the Great Proletariat Cultural Revolution is based—"tsao-fan yu-li" (to rebel is justified)—holds views contradictory to those attributed to Liu Shao-ch'i. In his opinion, which echoes the views of Marx and Lenin, law is an instrument employed by one class to oppress another class. Because codified law is a stabilizing force in society, it tends to preserve the status quo, a condition which Mao must preclude at all costs. Thus, he has initiated the Great Proletariat Cultural Revolution in an attempt to rekindle a state of revolutionary fervor among the populace and thereby sustain an active struggle between classes. Because Mao's doctrine of justified rebellion and the Red Guards' attitude of defiance to authority are antithetical to the principle of legality as advocated by Liu Shao-ch'i in 1956, these doctrines cannot co-exist. At present the revolution seems to have assured victory to Mao's principles and Liu Shao-ch'i has been purged; this victory further impedes the process of sound legal development in China. It is unlikely that legal organs will again function normally until the Red Guard lawlessness has subsided and the present revolutionary zeal has begun to ebb. In fact, the systematic development of the Communist Chinese legal system will remain in abeyance until Mao Tse-tung is no longer in power. The study of Chinese law should not be abandoned, however, because of the lack of information on current legal development; a fairly large number of source materials pertinent to an understanding of Communist Chinese legal institutions have yet to be tapped.

NOTES

[1] *Lectures on the General Principles of Criminal Law in the People's Republic of China.* U.S. Department of Commerce, Office of Technical Services, Joint Publications Research Service, No. 13331, March 30, 1962, 237 p.

[2] Lu Ting-yi, "Let a Hundred Flowers Blossom, a Hundred Schools of Thought Contend," address delivered on May 26, 1956, to a gathering of scientists, social scientists, doctors, writers, and others in Peking, revised by the author and published in the *Jen-min Jih-pao* (People's Daily) on June 13, 1956.

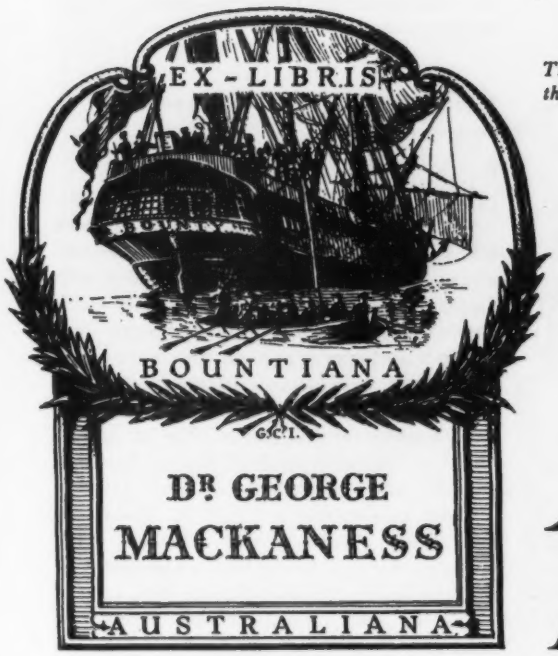
[3] This idea is further developed in Tao-tai Hsia's "Justice in Peking," *Current Scene,* 5:6 (January 16, 1967).

[4] "How Vicious Ch'en I Is," *Hung-wei Chan-pao* (Red Guard Combat Bulletin), a tabloid published by the Red Guards and Tungfanghung Commune of Chinese People's University, Congress of Red Guards, Peking, April 13, 1967. For the English translation, see the issuance of the American Consulate General in Hong Kong, *Survey of China Mainland Press,* No. 4007 (August 23, 1967), p. 2.

[5] A selective list of periodical legal literature is included in the Library of Congress publication *Guide to Selected Legal Sources of Mainland China,* compiled by Tao-tai Hsia (Washington, 1967), p. 253–319.

[6] Asai Atsushi, "Chinese Cultural Revolution as Seen by a Jurist," *Hōgaku Seminā* (Law Seminar; January 1968), p. 76.

[7] Liu Shao-ch'i, "The Political Report of the Central Committee of the Communist Party of China to the Eighth National Congress of the Party," in *Eighth National Congress of the Communist Party of China; Volume I; Documents* (Peking, Foreign Languages Press, 1956), p. 81–82.



The "Bountiana" bookplate, reproduced from the Acts of Council *for the years 1833 to 1851.*

And Be It Enacted...

SOME EARLY LAWS FOR VAN DIEMEN'S LAND

by
William H. Crouch

When Capt. William Bligh, R.N., weighed anchor in H.M.S. *Bounty* on September 4, 1788, in what is now Australia's southernmost state and spread his sails for Tahiti, he seems to have set in motion a chain of events that eventually led to bringing together a distinguished collection of printed materials labeled "Bountiana." When this collection was sold in 1967, the Law Library was fortunate in procuring several rare legal volumes. The collection had been assembled by George Mackaness, O.B.E., M.A., Litt.D., F.R.A.H.S., author of many Australian historical tracts, including several most engaging studies of Captain Bligh and his controversial career.[1]

Two of the newly acquired volumes were of more than usual interest. Both dealt with an obscure, faraway area known only as having some close ties or affinity with Australia: Van Diemen's Land, or present-day Tasmania.

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Portrait of William Bligh by an unknown artist. Reproduced from The Life of Vice-Admiral William Bligh *by George Mackaness.*

Bligh's chart of Adventure Bay, reproduced from the same volume.

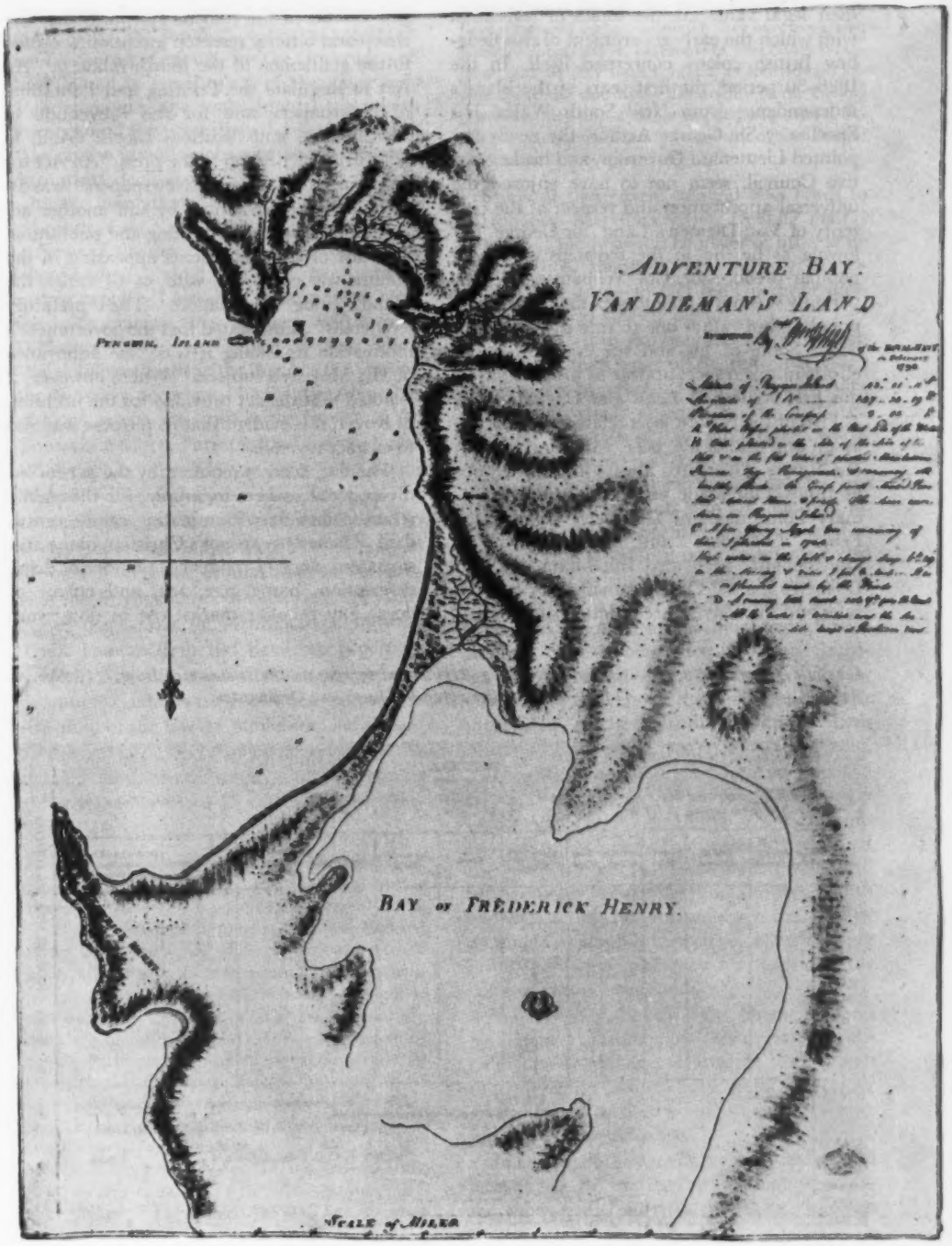
The two volumes comprised early and rare Australian colonial laws not previously represented in the Law Library's collections. But most exciting, probably, each bore, on the inside front cover, a distinctive, eye-catching bookplate depicting H.M.S. *Bounty,* with "Bountiana" set out in print immediately underneath. This plate constitutes persuasive evidence, indeed, that it was Bligh's relationship to Van Diemen's Land which caused the books to be preserved and also led to their welcome addition to the Library's collection of rare lawbooks.

The previous owner, George Mackaness, has documented four visits to Van Diemen's Land by Captain Bligh. In 1777 he arrived for the first time in the island's Adventure Bay; 1788 finds him in the *Bounty* and embarking from the bay on his most famous sea journey—the one to Tahiti, on which occurred the famous mutiny and the remarkable 1,200-league open-boat voyage to the Dutch colony of Timor; in 1792, on what is known as his second breadfruit voyage, he spent a fortnight in Van Diemen's Land; finally, as the dispossessed Governor of New South Wales, he escaped and resided 10 months on the island, in 1809 and 1810, until it was safe for him to return and meet with his successor in Sydney. That the captain was well acquainted with Van Diemen's Land as a result of these trips has been told in print many times. Actually, his personally mapped explorations and discoveries, with his fervor also for botanical experiments—he is credited with introducing the first apple trees on the island—serve to make him a most celebrated and colorful contributor to its early history.

Sometimes referred to as "Isle of Mountains" or "Isle of Splendor," this off-Australia territory was discovered by Abel Janzoon Tasman on November 24, 1642. Named by him after Anthony Van Diemen, then Governor-General of the Dutch possessions in the East Indies, the island much later on—in 1803—was settled by the British. From then until 1825 it was a dependency of New South Wales. Not until 1901, however, did the land, by then named Tasmania, become federated with the other Australian states into the modern Commonwealth of Australia.

The two volumes of the collected laws of Van Diemen's Land now in the Law Library cover a major part of the legislation enacted in the island's formative colonial period. The first is entitled *Copies of the Laws and Ordinances Passed by the Governor and Council of the Colony of Van Diemen's Land 1826–1830 . . . Ordered, by the House of Commons, To Be Printed, 11 March 1831.* Its companion volume, of slightly later vintage and much more extensive in its content, has been bound with the title *Acts of Council* on the cover. It includes acts that are chronologically arranged from the year 1833 to May 1851. In Sir John Ferguson's *Bibliography of Australia* the first volume can be identified as No. 1438. The second volume covers the same material as Nos. 2403, 2661, 2877, 3113, 3316, 3523, 3751, 3938, 4192, 4420, 4940, 5221, and 5562 in the *Bibliography.*

More of interest as period pieces than for

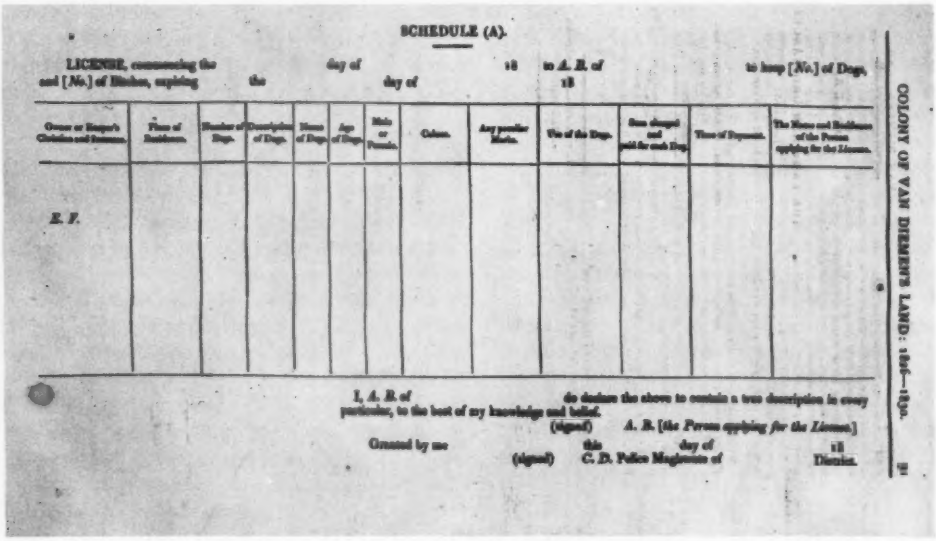

ADVENTURE BAY.
VAN DIEMAN'S LAND
PENGUIN ISLAND
BAY OF FREDERICK HENRY.
SCALE of MILES

their legal value are the topics of legislation with which the early government of this fledgling British colony concerned itself. In the 1826–30 period, the first years of the island's independence from New South Wales, His Excellency Sir George Arthur, the newly appointed Lieutenant Governor, and his Legislative Council, seem not to have enjoyed the universal approbation and respect of the citizenry of Van Diemen's Land. Sir George, following as he did in the footsteps of a very popular predecessor, Col. William Sorell, apparently was not a man to seek the favor of the populace but rather one to rule it with a firm hand. Some of his and the council's initial efforts in this respect appear as printed acts in this first volume of *Laws and Ordinances*

Five of the earliest laws related to the regulation and sale of ale, beer, wine, and spirituous liquors, a lush area always for raising public funds. One made provision for the "Summary Punishment of Disorderly Conduct in Female Offenders" and, apparently as an afterthought, for "any Inhabitant of Van Diemen's Land." Others provided for postage rates and the conveyance of letters and for improvements in the judicial system. Some very sharp and bitterly resented attention was paid to the gentlemen of the fourth estate by "An Act to Regulate the Printing and Publishing of Newspapers, and for the Prevention of Blasphemous and Seditious Libels." And, to add further irritation to the press, "An Act for Imposing a Duty upon Newspapers" was issued, then supplemented by still another act regulating newspaper printing and publishing. The last of the enactments appearing in the volume was concerned with, of all things, the island's dog population. The prefatory "Whereas" clause stated that the government's motivation in issuing it was "the annoyance of His Majesty's subjects." When, however, it is noted that the act provided for the licensing of Rover, it is evident that its purpose was also to extract revenue.

The dog licenses required by the act forced the resident owners to supply, for the public records, some very illuminating canine census data: Owner's or keeper's Christian name and surname; place of residence; number of dogs; description, name, age, sex, and colour of dogs; any peculiar marks; use of dogs; sum

***Schedule** prescribed in "An Act for establishing Regulations to restrain the Increase of Dogs" (10 Geo. 4, No. 11), from the earlier volume of* Laws and Ordinances.



SCHEDULE (A).

LICENSE, commencing the day of 18 to A. B. of to keep [No.] of Dogs, and [No.] of Bitches, expiring the day of 18

Owner or Keeper's Christian and Surname.	Place of Residence.	Number of Dogs.	Description of Dogs.	Name of Dogs.	Age of Dogs.	Male or Female.	Colour.	Any peculiar Marks.	Use of the Dogs.	Sum charged and paid for each Dog.	Time of Payment.	The Name and Residence of the Person applying for the License.
E. F.												

I, A. B. of do declare the above to contain a true description in every particular, to the best of my knowledge and belief.

(signed) A. B. [the Person applying for the License.]

Granted by me this day of 18

(signed) C. D. Police Magistrate of Division.

COLONY OF VAN DIEMEN'S LAND: 1826—1830.

charged and paid for each dog; time of payment; name and residence of license applicant. As if it were not enough for the Governor and his Council to annoy some of the gayer lady Vandemonians, the moonshiners, the tavern keepers, and the press, they did not hesitate to take on the island's embattled dog owners too. A marked decline in the popularity of both with the inhabitants was, of course, the natural result of such legislative activity.

News of the government's regulation of the island's dogs spread outward to Australia rather rapidly. Less than four months after the law's enactment in January 1830 in Van Diemen's Land, the Colony of New South Wales followed suit with "An Act for abating the Nuisance occasioned by the great Number of Dogs, which are loose in the Streets of the Towns of Sydney, Parramatta, Liverpool, and Windsor, in the Colony of New South Wales." [2] The descriptive data required for procuring licenses there were more limited in scope—more reasonable in the approach to the citizen. Whether or not these two acts provide the first instances of requiring the wearing of dog collars for identification purposes is not known. Both did have the provision.

Henry Melville, one of the disappointed and discomfited inhabitants, who was himself to run afoul of the law for publishing a comment on the action of the supreme court in a cattle-stealing case, wrote some scathing rebukes about these first Van Diemen's Land legislative efforts: [3]

> The Legislative Council—that body which had been happily so tranquil during the preceding year—now commenced active operations, and a whole series of laws were passed, some of them uncalled for, others unnecessary, and several that have proved highly injurious to the settlement. It will be, however, the duty of the writer to confine himself to two of the most important, that of the Impounding, and the other the Usury Act. It might be asked by the Colonial reader, why no mention should be made of the ridiculous Slaughtering Act, which will not allow a farmer to sell his veal, his sucking pigs, or his rabbits in Hobart Town—it might be asked, why no mention is made of the harrassing and oppressive Harbouring Act—of the imbecile Dog Act—of the semblance of a Jury Act—or of the arbitrary House of Correction Act &c., but the compiler's reply is simply, that although such laws may have depressed many—although they may have been considered oppressive, and some of the clauses tyrannical, still, as they were confined to individual Colonists, and did not injure the welfare of the Colony generally, they are of minor import, and cannot obtain sufficient commentary in a work of this limited description.

Study of these early colonial laws tends to corroborate Melville's views. Dealing mainly with what today would be issues of little or no consequence, the laws were largely experimental in nature—in fact the Governor himself in 1835 so labeled them.

As indicated in the quotation, the two acts of Council that particularly drew Melville's ire were the Impounding and the Usury Acts, neither of which appears in the acquired 1826–30 cumulation. In embittered words Melville points out that enactment of the latter of the two acts excluded the English law on usury from operation in Van Diemen's Land. The result, he goes on to emphasize, was that a higher rate of interest on investments could be obtained on the island than in any other British colony, a situation which led in time to control of financial affairs by outside British capital. "The abomination of usury introduced the still greater abomination of law charges" by lawyers, or the "gentlemen of the profession," as he scornfully refers to them from his prison quarters.

The other object of his sharply worded criticism was the act which pushed privately owned sheep and cattle off the Crown lands that comprised about fourteen-fifteenths of the island's area. The small herder was hard hit, while his rich competitor, the large landowner, was left unharmed—even bettered by gaining a monopolistic position in the herding industry. Such a consequence is to be roundly condemned, not condoned.

But not all of the early Van Diemen's Land laws lacked substance or were objects of ridicule. The enactments relating to the colony's judiciary and the administration of justice, for example, may be deemed of more than passing interest and significance.

Included in the second volume are several acts of the British Parliament that were extended in their effect to the Colony of Van

Diemen's Land by an Act of Council (8 Wm. 4, No. 1). At least one of them is worth singling out, this the Act for Enabling Persons Indicted of Felony To Make Their Defence by Counsel or Attorney, 20th August 1836 (6 & 7 Wm. 4, Ch. 114). Under this provision persons accused of felonies would be entitled to representation by counsel, a right, of course, now deeply imbedded in modern Anglo-American jurisprudence.

Perhaps the greatest obstacle to the enforcement of law and order on the island in the 1820's was the absence of an adequate system of courts. The nearest court for the trial of capital offenses was in the sister colony of New South Wales. The delay in bringing the accused to trial, with the additional difficulty of proving culpability at such a distance, is said to have allowed 90 percent of the guilty to escape punishment. Small wonder then, when such a state of affairs prevailed, that the Governor and his Council should turn their attention to reform.

At least four acts during the period from 1828 to 1830 dealt largely with strengthening the hand of the judiciary. About 20 more such pieces of legislation are contained in the later collected acts from 1833 to 1850. The prime defect, lack of a judicial forum for adjudicating all types of cases including those formerly referred to New South Wales, had been remedied in 1823 by a change in the colony's constitution or charter that provided for a supreme court of judicature. Subsequent acts of the Council further established the judiciary on comprehensive bases.

Through an Act for the Better Administration of Justice in New South Wales and Van Diemen's Land, 19th July 1823 (4 Geo. 4, c. 96), the British Parliament authorized His Majesty to institute in the colony a court of criminal and civil jurisdiction entitled "The Supreme Court of Van Diemen's Land." From one to three judges were provided for, depending on the court's volume of cases; its power was extended to "all Pleas, Civil, Criminal or Mixed, and Jurisdiction in all Cases whatsoever." A jury system was also approved, as was a system of minor courts. To be sure, one of the act's provisions probably did not please the inhabitants. Section XV allowed appeals from Supreme Court decisions to be heard by the Governor or Acting Governor of New South Wales. The force of the provision was somewhat blunted, nevertheless, by the act's 44th and penultimate section: When Van Diemen's Land became fully independent, appeals to the New South Wales Governor were to cease.

So overjoyed were the inhabitants with their new court that they immediately instituted a whole series of diverse actions, civil and criminal. Having previously been deprived of the excitements of litigation, Melville wrote, they hastened to discover for themselves "the hidden mysteries of the law." A *cause célèbre* arose from a criminal information sworn out by a public writer against a round dozen of the leading merchants and settlers. He had opposed the colony's independence, thereby incurring the wrath of the accused individuals, who had struck back at him by signing a number of violent resolutions that took him to task for his unpopular position. The trial evoked considerable interest and much spirited conversation and had for its result a finding of guilty against the twelve. Because no judgments were given, all seem to have enjoyed basking in the publicity engendered by the proceedings. Presumably the luster of the new court was considerably enhanced by the staging of such entertaining courtroom performances.

Some idea of the stresses and strains under which the colony had been placed because of the lack of adequate courts can be gathered from a brief look at the situation before the year 1824. The only court in existence in Van Dieman's Land was the Judge Advocate's. Its jurisdiction was limited to civil cases where the amount in dispute did not exceed the sum of £50. With this limitation it might be conjectured that cases involving more money would be transferred to New South Wales. This does not allow, however, for the grand measure of native legal cunning always to be found wherever lawyers abide. With the court's aid, the lawyers, quite blithely it would seem, worked their way around the impediment by segmenting the cases into discrete £50 suits. Thus the Judge Advocate was enabled to hear one trial, with numerous parts having predictable sequential consequences.

All parties can be assumed to have been happy with the innovation, even the losers, for the outlay of passage money to New South Wales and return was at least avoided.

There were no appeals from the Judge Advocate's "learned" decisions. This jurist, by the way, never failed to make clear to litigants who came before him that he himself was not a lawyer and would not be bothered with the law's intricacies. Once, on being praised by a celebrated pleader in the colony for his perspicacity and judicial power with the flattering observation that there was no appeal from His Honor's wise decisions "save to the Lord Chancellor of England," the Judge Advocate hastened to set the record straight by pointing out there was *no* appeal *even* to the Lord Chancellor. Quick to agree "there is *no* appeal from the wisdom of your judgment, *even* to the Lord Chancellor himself," the lawyer thereby swayed the Judge Advocate into a verdict in favor of his client! [4]

Henry Melville also provides us with a very enlightening anecdote concerning what must have been a most enjoyable and delightful practice for the lawyer in the Judge Advocate's Court: [5]

> . . . At one time a celebrated advocate, employed as plaintiff's counsel, made out a case so exceedingly satisfactory to His Honor, that a verdict was about to be recorded, when it was found no one was present on the part of the defendant. After some little irregular proceeding, the plaintiff's counsel observed that it was a pity no one appeared for the defence, and rather than the defence of the action should not be heard, if His Honor would allow him, he would act for the defendant also. He did so, and the defendant, according to his own shewing, had the best of it, and, to the astonishment of all present, obtained a verdict without a moment's hesitation.

One can surmise that such forensic ability was also easily equal to the distasteful task of explaining the loss of the suit to his client.

Episodes such as these doubtless played their part in keeping the law well in the forefront of public attention. It is obvious, too, that the style and form of the enactments of those days served to draw the people's attention to them. Apparently the early British legislative stylists believed that repetition of key introductory phrases lent a sobering emphasis to the enactment that would win the respect of the citizenry. The printed acts appearing in these two Van Diemen's Land lawbooks are replete with words and phrases, still approved in current legal verbiage, such as "Whereas," "And Be It Enacted," "Provided Always." Indeed, An Act To Make Provision for the More Effective Distribution of Insolvent Estates, 2 June 1839 (3 Vict. No. 1), aside from a sprinkling of five "Whereases" and six "Provided Alwayses," has nearly a hundred "And Be It Enacteds" to dazzle the eye. Contrast this with present-day draftsmanship practice in Tasmanian and other English language lawmaking where, happily, one of each usually suffices to introduce and stress the contents of legislation.

NOTES

[1] His two-volume *Life of Vice-Admiral William Bligh* (Sydney, Angus & Robertson Ltd., 1931), is a definitive biography. Of special interest is the paper he read before the Royal Society of Tasmania at its Centenary Meeting, Hobart, October 14, 1943: *Captain William Bligh's Discoveries and Observations in Van Diemen's Land* (Sydney, D. S. Ford, 1943).

[2] 14th April, 1830, 11 Geo. 4, No. 8. This act is contained in another splendid "Bountiana" compendium, *Acts and Ordinances of the Governor and Council of New South Wales, 1824 to 1834,* acquired along with the Van Diemen's Land items.

[3] Melville was a great advocate of freedom of the press and liberty of the subject. In November 1835 he was imprisoned for contempt of court; it was during this period that he wrote his *History of Van Diemen's Land From 1824–1835.* This quotation is taken from the 1965 reprint, p. 93.

[4] Ibid., p. 7, note.

[5] Ibid., p. 8, note.

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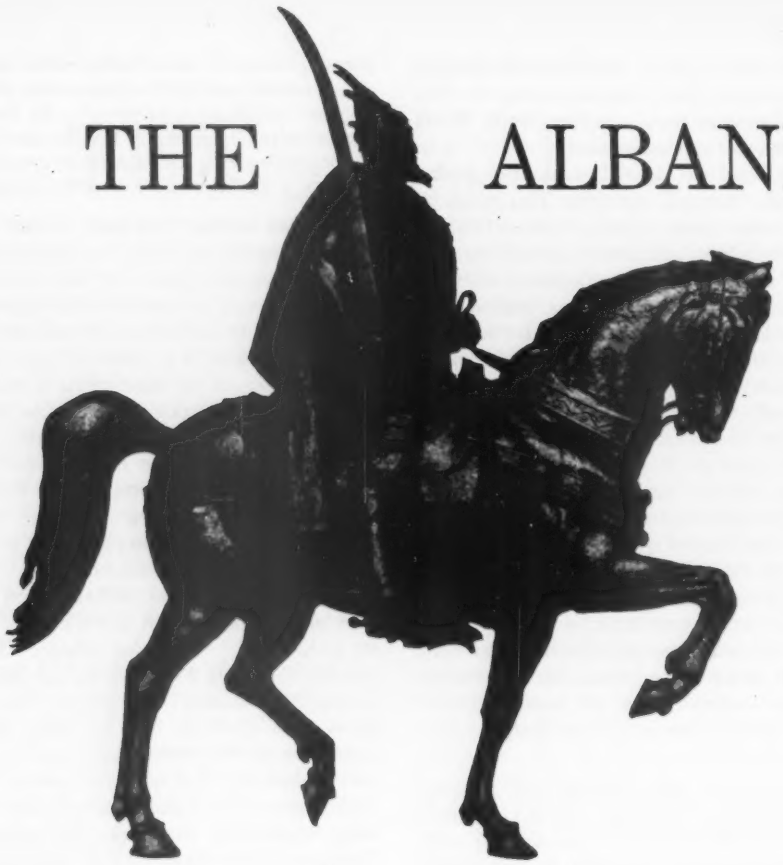
THE ALBANIAN



The Greek geographer Strabo and other ancient authors described the Illyrians, of whom the present-day Albanians are the direct descendants, at length. The Illyrians were the first Indo-European settlers of the northern and eastern shores of the Adriatic in an area which extended from Venice to Greek Acarnania in the south. Alexander the Great held them and the Thracians to be the bravest and hardiest of all European peoples of those times. The Albanians, constituting the main branch of the Illyrian peoples, must have been, obviously, the toughest of them all since they survived the Roman, Byzantine, Slavic, and Turkish Empires and the visitations of the Visigoths.[1]

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The German historian Fallmerayer called the period from the middle of the 14th century A.D. to the last half of the 15th century the heroic era of the Albanian people.[2] Into this span of history, which encompassed the burgeoning struggle between Europe and the Ottoman Empire, strode the Albanian George Castrioti Scanderbeg, warrior, statesman, and lawmaker, who so distinguished himself in the struggle against the Turks that Fallmerayer, after painstaking research, sums him up as "the most perfect, most fortunate and greatest master of warfare of all time."[3]

For Albania and Albanians the world over this year, 1968,[4] is the Year of Scanderbeg, their greatest national hero, since it marks the 500th anniversary of his death at the age of about 63.[5] This commemoration is also the occasion for the present examination of the

CUSTOMARY LAW

by Kemal Vokopola

Albanian customary law which, during the national leadership of Scanderbeg, reached its greatest flower.

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Monument to Scanderbeg in the main square of Tirana, capital of Albania. This and the other illustrations for this article are reproduced from Gjergj Kastrioti Skenderbeu 1468–1968, *published in Tirana in 1967 by the Institute of History and Literature of the University of Tirana.*

THE ALBANIAN

The Greek geographer Strabo and other ancient authors described the Illyrians, of whom the present-day Albanians are the direct descendants, at length. The Illyrians were the first Indo-European settlers of the northern and eastern shores of the Adriatic in an area which extended from Venice to Greek Acarnania in the south. Alexander the Great held them and the Thracians to be the bravest and hardiest of all European peoples of those times. The Albanians, constituting the main branch of the Illyrian peoples, must have been, obviously, the toughest of them all since they survived the Roman, Byzantine, Slavic, and Turkish Empires and the visitations of the Visigoths.[1]

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The German historian Fallmerayer called the period from the middle of the 14th century A.D. to the last half of the 15th century the heroic era of the Albanian people.[2] Into this span of history, which encompassed the burgeoning struggle between Europe and the Ottoman Empire, strode the Albanian George Castrioti Scanderbeg, warrior, statesman, and lawmaker, who so distinguished himself in the struggle against the Turks that Fallmerayer, after painstaking research, sums him up as "the most perfect, most fortunate and greatest master of warfare of all time." [3]

For Albania and Albanians the world over this year, 1968, [4] is the Year of Scanderbeg, their greatest national hero, since it marks the 500th anniversary of his death at the age of about 63.[5] This commemoration is also the occasion for the present examination of the

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them. Back in his homeland he raised his red banner with the black and double-headed eagle to rally his countrymen to rebellion.

Scanderbeg's first measure was to unify the greater and lesser tribal chieftains, who, though they commanded absolute obedience among their own clans, were distrustful of and often in open hostility with one another. In 1444 Scanderbeg called the Congress of Lesh and his statesmanship was such that, for the first time in Albanian history, he was able to forge a powerful league to which each leader voluntarily contributed money and men. He so identified himself with the mountaineers in his work as judge and lawgiver, as a member of the conscription commission levying recruits throughout the country, and as commander in chief in the military campaigns, that the concerted national effort he achieved is considered a greater accomplishment than his string of victories over the powerful armies of Sultans Murad II and Muhammad II.[9]

The military and political unification of Albania under Scanderbeg also set the stage for the consolidation and unprecedented flourishing of the law. Although he imparted to his countrymen a sense of nationhood where the concept of a nation had not existed before and a dedication to a common cause, the law remained essentially tribal and diverse and retained this characteristic down to the 20th century.[10] That this individualistic feature was preserved was perhaps mainly due to the geographical conformation of the country. Of Albania's total area, 73 percent consists of mountains where the terrain is so rugged and sundered that a valley often can hold no more than one tribe.[11] It was particularly the mountains in the north which most preserved this type of tribal development. Farther south, where the mountains in some areas leveled off, the tribal structure became indistinct and the customary law tended to lose its tribal character through the absorption of foreign legal elements. This brief study therefore concerns itself chiefly with the customary law of Northern Albania, whose codifications during the era of Scanderbeg show classic pan-Albanian features and have been the chief targets of scholarly study in the 20th century.

The origins of the Albanian customary law are largely unknown. Although recent

research assumes that much of it developed spontaneously in the mountain redoubts, too many of these institutions betray Roman, Germanic, and other ancient foreign ancestry [12] to permit the assumption that they are entirely indigenous.

Since many of the Albanian tribesmen's concerns were pastoral, a substantial part of the customary law reflects the problems of the shepherd and peasant, such as grazing, irrigation and tilling of the sparse land. But even more pronounced is that element in the law which reflects the concerns of a geographically cloistered community that has no separate governmental structure for law enforcement. Since the social institutions, such as the family, were so strong in developing the legal ones, this brief survey of the customary law is given in its interrelation with the social structure of the tribe.

The family has represented the basic and most important unit in the social and public order of the Albanians from the beginnings of their recorded history down to modern times. As the Roman law had its *pater familias,* Albanian tribal law accorded the head or master authority over all affairs of the family. The Albanian family differed basically from the Roman in that the headship of the Albanian family represented the lowest rung in the quasi-governmental hierarchy, whereas the rank of the Roman *pater familias* was irrelevant from the point of view of public law.[13] The headship of the Albanian family was hereditary but did not necessarily descend upon the first-born but upon the son whom the adult males considered the best qualified by experience, knowledge of the law, age, and wisdom to rule the family. Whether or not primogeniture was the deciding factor in the selection of the head was therefore voted upon in a truly democratic process. Where there was no suitable male for the office, a woman could take over.[14]

Ownership in all the possessions of the family was not, as in the case of the *pater familias* of the Roman law, in the head of the family,[15] but was basically held in a type of common ownership by all family members.[16] There was no testamentary law since the individual possessed nothing to will. Inheritance was by family and not by the individual.

Facing page: A 16th-century engraving showing Scanderbeg engaged in battle against the Turkish Sultan.

Left: Scanderbeg's seal bearing the family coat of arms.

Anything acquired by the head inured to the benefit of all. Each individual was encouraged to feel that all property and all concerns of the family were his own.[17] This led to a strong sense of community, which was most strongly fostered in the family but extended to the very top of the social structure, the group of tribes.

The power of the head of the family was strictly limited in that serious matters that concerned the family could be decided only by the family council which was composed of all the members who had reached majority.[18] The head was strictly charged with acting with justice toward all members, and if he abused his authority, the family members could censure him and even had the right to choose from among themselves another head whom they considered more worthy of the task. The head had certain powers to enforce action by sanctions which, however, never involved degradation of personality.[19] But if a member of the family had violated the code of honor, which was the most powerful guide of conduct in the household, and thus brought disgrace upon the family, it was the council which cast him out, though he was given a share of the property.[20] If a member left the family voluntarily, he could not sell his common share without regard to the interests of the family, as the coowners, the brotherhood and the community where he lived had a right of preemption. There was no statute of limitations. Anything held in ownership, whether movables or real property, could be reclaimed by the owner or successors in title even after the passage of a hundred years or more.

Ascending in the social structure one finds the brotherhood (*vllaznia*) which developed when the household split up and one or more brothers or cousins established their own houses. This usually occurred when the old family home became overcrowded and, as Margaret Hasluck, a keen observer of Albanian life and customary law, so picturesquely expressed it, some of the men had to "hive off," just as the Albanian proverb says, "when the hive is full the bees must swarm." [21] In this case a division of property took place which was done on such equitable terms that one tribal law, for instance, accorded shares of the food supplies—an important matter in a marginal agricultural economy—to unborn children. But in general, the division took place *per stirpes,* in that each brother received an aliquot share without regard to the number of his children.[22] The fairness of the division was so strictly maintained that in some areas the law prohibited the father from carrying out the separation since he might favor one child over another and, instead, relegated this function to nonfamily elders or neighbors.[23]

The brother or cousin setting up the new household became the master of the new family and ceased to be under the governing power of the former head. The original head of the household became the elder of the brotherhood whose counsel and assistance were sought and who still remained the titular head.[24]

The next higher grouping was the kin (*fis*), formed by the splitting up of the household into several brotherhoods. The original head of the household continued as the head of the whole structure and now was regarded as the elder of the kin.

Although several kins could combine into the next higher group, the village, clan, or tribe, this new entity could also include other stocks outside of the original blood relationship. If it was composed of the same related stocks, the head of the ancestral home became the village, tribal, or clan elder. If not, the head of the strongest clan was elected to the office. The clan or tribe was strongly autonomous, mainly because of the difficulty of communicating with other similar units, and it made up its own laws without regard to other parallel communities. It enjoyed full statehood, directed its armed forces, declared war, and had clearly defined territorial boundaries.[25]

Often groups of kins, tribes, villages, or townships combined into larger units called nations, usually consisting of units with the same language and similar interests such as common defense.[26]

An institution that intimately tied in with this social organization was that of the elders (*plêqët*).[27] This term, which did not necessarily reflect a person's age, applied, at the lowest echelon, to the head or master of the house-

hold, and in most cases this office coincided with leadership positions through the brotherhood on up to the head of the clan and of the tribe. Since the head of the social group was selected on the basis of special merit, it was natural that these officials were highly respected and their offices sought in connection with disputes that arose between members of the group. The elders thus assumed judiciary functions and administered the law according to common sense principles of equity rather than strict law. They were not salaried, but each litigant who requested their services was required to pay fees which, in an economy where money was scarce or nonexistent, consisted of payments in kind such as meals and shelter during the proceedings, a sheep, or other livestock. Each litigant had to post security consisting of some object of outstanding value he owned to ensure, on the one hand, that he would pay the officiating elder his fee upon completion of the case and, more important, that he would comply with the judgment rendered. If the litigant proved recalcitrant the elder or elders officiating had authority to retain the security and, after a reasonable period for redemption, to sell it.

There was also a form of appellate procedure by which a dissatisfied litigant could take a judgment for review to the elders of the next higher social group, and in some instances to the highest tribunal in the tribe, the general assembly. On appeal, the presentation of the case was as a rule not made by the litigants but by the elder or elders who had sat in the lower instance, thus removing the case from the impassioned atmosphere of contending parties. This judicial system appears to have worked remarkably well as an elder's standing in the community depended on his reputation for impartiality and fairness.

In the truly democratic tradition of the Albanians, all important business that concerned individuals or the society was transacted by meetings of selected delegates in a form of representative government, or by all members in smaller tribal units.[28] Called the general assembly (*kuvênd,* an Albanization of the Latin *conventio*), it afforded all members, one for each household, a chance to have their say in matters that were considered too vital to the concerns of the society to be left to the executive powers of the heads or elders alone. The meetings were held under rigid rules for assembly discipline and concerned such matters as litigation that the elders were not able to resolve in a manner acceptable to the parties, expulsion of offenders from the family, and the death penalty for recidivist members who were considered a threat to the social fabric and for those who committed heinous crimes against society such as sacrilege or the murder of protected persons such as a guest in the house. When the assembly was meeting in plenary session, unexcused absence entailed a stiff fine. Representatives of all tribal units down to the household attended the general assembly, which was presided over by the head of the tribe or by the military standard bearer (*flamurtarë*), a high administrative official whose main function was to rally and lead troops in case of war and to take care of routine administrative functions.[29]

It was in the general assemblies of the tribe that changes in the law were debated and voted upon. At one such meeting Scanderbeg, who looked askance at any tribal custom which might sap the military strength of the country, opposed the blood feud on the curious grounds that the principle of a life for a life was faulty since not all men had been created equal. He did not carry the day, however, since his opponents and the assembly held, at least for the purposes of taking the life of others in a blood feud, that all men were equal.[30]

At this level the assembly discussed and passed on mutual military aid between tribes (sometimes with the participation of other tribes in the assembly), declaration of war, border disputes, extradition of criminals, and other matters pertaining to foreign relations. The most famous of these meetings was the one which took place in Lesh in 1444 and led to the formation of the League of Lesh, which provided the backbone for Scanderbeg's insurrection. The general assembly often brought together clans or villages about to go to war over incidents seriously affecting their economy, such as cattle stealing, interference with established water rights, or harassment of travel in each other's territory.

The Albanian tribe thus appears as a

strongly autonomous unit that dealt with other tribes as if they were alien entities. Scanderbeg was able to channel these energies into a democratic process of intertribal negotiation. Under his prodding Albania's tribes forsook the divisiveness of intertribal indifference and contention and began to look upon themselves as part of a nation, a feeling which was strongly bolstered by the fame of the military victories which evoked the admiration of all Europe. Hand in hand with this sweep of national fervor went an interest in the customary law which led to codifications in major tribal areas.

This process of establishing codes in Albania took a form somewhat different from that in other countries engaged in transforming primitive communities into nations. In speaking of the consolidation of law into codes in an emerging society, Sir Henry James Sumner Maine states that "the codes were certainly in the main a direct result of the invention of writing." [31] In Albania the codes sprang into form and maintained their identity through almost 500 years of foreign occupation without the written medium.

Another feature of ancient customary laws was their tendency, because of their unwritten form, to become the memorized preserve of "aristocracies" which "seem to have abused their monopoly of legal knowledge," as a consequence of which the "democratic sentiment may have added to their [the codes'] popularity." [32] In Albania the elders were the chief repository of the law, but it was the democratic process by which the laws were adopted or changed which kept them from becoming the domain of those who administered them. For the enactment and amendment of the law were, as already stated, the functions of the general assemblies in which one or more representatives from each household, brotherhood, and clan participated. The common man thus had a hand in every development of the law. The wide knowledge of the law was an effective bar against any elder's bending it to inequitable purposes and also was a safeguard for its preservation.

The Albanian codes had a feature in common which Maine notes in connection with other ancient laws in "that they mingled up religious, civil and merely moral ordinances." [33] This is evident from the general moral principles of the codes, which will be discussed later, and also from the published versions, such as that written down by Father Shtjefen Gjeçov,[34] where the first book deals with the church and another with the concept of honor.

The codes were also "casuistic" in nature in the sense that they dealt with a proliferation of specified cases in regard to which conduct was prescribed or proscribed. It was a law which, again in the words of Maine when describing other ancient laws, consisted of prohibitions and ordinances confined to a single description of acts and not to all acts of the same class.[35] The codes therefore were not structured according to general and particular principles of law but contained specific and detailed rules for every aspect of the mountaineers' simple life.

In the northern mountains of Albania where the legal development was strongest and most enduring, there evolved two codes. The one that held sway in the dominions of the Castrioti family bears Scanderbeg's name and has ruled the lives of the mountain folk in a large part of Albania through the centuries. Another famous Alexander, Lek (a variant of Alexander) Dukagjini, fashioned a code of even greater importance for the area which he controlled. This was the first code to appear in written form, in 1913, in the compilation by Father Gjeçov.[36]

Four other codes were compiled about this time, but they were of lesser importance probably because they do not bear the stamp of personality of Scanderbeg and Lek Dukagjini. Each code was called a *kanun,*[37] and all six *kanune* were collectively called the *Kanun* or Code of the Mountains. This total body of law governed an area which extended roughly from Kosovo, Yugoslavia, south to Epirus.

In spite of the codes' individualized treatment of as many aspects as possible of everyday life, one finds certain common features representing certain virtues which were fundamental precepts for the members of the social groups. Among them was *burrnia,* which expresses manliness, maturity, mental balance, adulthood, and virility and is considered the

fountain of other virtues; *urti,* which signifies wisdom and prudence; and *drejtësi,* which stands for justice, constraint, moderation, and valor, but also forgiveness.

Another basic concept in the *kanune* is *besa,* which takes in such qualities as loyalty, faithfulness, and fidelity to the given word, a concept that is the foundation of any truce, armistice, or alliance. It implies a commitment of greater force than any written agreement, pledging the acceptance of death rather than to go back on one's word. Anyone so weak as to break *besa* not only faced the stipulated punishment but the contempt of his community for generations to come.

The term *i lirë,* which is also the singular noun for the Illyrian peoples, covers the feeling of being free which is so deeply ingrained in the Albanian national character. For this reason the Code of the Mountains does not recognize slavery. No slaves have been admitted among the Albanians, for every Albanian is equal before the law with any other Albanian regardless of his station.

A tribe or an individual who dedicates himself to the above principles achieves *ndêrë,* the people's honor, and *ndêrshmënië,* the honor of the individual. This is the concept that not only underlies such general principles as mutual protection and assistance, hospitality and friendship, redress and revenge for just cause but also suffuses all specific institutions of the Code of the Mountains such as warranty, deposit, custody, or pledge.

The criminal law, stated briefly, established the limits of proper conduct and imposed duties that were meant to prevent injustices and wrongdoing. Penalties imposed were fines, compensation for damage or injury, a modified form of confinement, exile, or confiscation of property. But there was no real personal or bodily punishment except the death penalty for certain dishonorable acts which imply the loss or lack in the perpetrator of every human dignity. Here again the code of honor as interpreted by the community shows its strength because the crimes against the social structure were much more serious than crimes against the individual, such as murder. Interestingly enough, the tribal law did not concern itself with the killing of another unless the act at the same time constituted an attack on the social order, such as the assassination of an elder. The law left the matter to be settled by the families of the parties involved by means of the blood feud; it merely took precautions that there should not be a senseless spread of the killing, thus endangering the peace of the community.[38]

Scanderbeg's friend Lek Dukagjini, who compiled and gave his name to the most famous of the codes that formed the Code of the Mountains.

In its form of development and regulation the blood feud was in fact one of the most persistent and widespread phenomena of Albanian tribal law. Probably the most plausible explanation for its having loomed so large is the fact that there was no independent, strong central authority to impose criminal sanctions common to modern systems of law.[39]

But the blood feud was hedged about with strict rules that gave it the aspect of a chivalrous game of death. Thus, before the family

Fresco at the main entrance of a palace in Rome adjacent to the Quirinal, commemorating Scanderbeg's stay there during his visit to the Pope in December 1466. Both palace and street bear his name.

went out to wreak its vengeance, it had to give the murderer one or two days of grace to settle his affairs before the avengers descended upon him.[40] If the avenger came upon the murderer while the latter was in peril of death from such danger as drowning, the avenger would risk his life to save that of the other. For to kill the victim while he was helpless would not have discharged his obligation under the blood feud. If the family of the victim had no way of knowing who the murderer was, the latter was obliged to inform the family that he had done the deed. The widow did not hesitate to send out her only son, though he was inexperienced in the killing ways of adults, on the dangerous mission of avenging the death of her husband, for such was the law. Often entire families and even villages became entangled in a blood feud and the killing would be extensive until the feud was stilled either by the common wish of all concerned or because the scales of personalized justice were thought to have been brought into balance.

What makes the study of Albanian customary law particularly interesting is the fact that in our own century it has been a living thing, breathing with the unalloyed strength of tribal usage. It was handed down from generation to generation by word of mouth with a faithfulness to the original oral text "as if it had been engraved on tablets of bronze."[41] In the brief span of their lives two great men, Scanderbeg and Lek Dukagjini, established a proud legal tradition that the Albanians cherished in the centuries of their withdrawal to the mountains during the Turkish occupation. Though 70 percent of the predominately Christian nation turned to Islam, the *kanune* of the two men and the other codes of the mountains almost wholly preserved their integrity, and they remained the law of every Albanian regardless of his religion. The tribal structure of society and the law were the noble heritage that the Albanians were able to salvage after the death of their leader Scanderbeg, for, as Miss Hasluck has said, "the self-government of the Albanian mountaineers went far toward being true democracy in the Anglo-American sense of that much-abused word. It its primitive way it was really government of the People, by the People, for the People. It had its defects, of course; sometimes a judge took a bribe or a man bore false witness in spite of the deterrents devised against such malpractices. Yet the legal system worked well on the whole, was often speedier and always cheaper than any European counterpart, and left few crimes unsolved." [42]

In 1912 Albania declared a precarious independence. Even thereafter, the Codes of the Mountains continued in force, but they were found to be too diversified to lend themselves to a modern codification. Nevertheless, a decree of June 30, 1928, declared the Codes of the Mountains to be applicable as subsidiary law, and, to the extent that they did not conflict with the modern codes, they remained in effect even after the enactment of the Civil Code of 1929 and subsequent legislation.

Albanian and foreign scholars have done much work in the study of the old Codes of

the Mountains in recent years. Especially since the Italian occupation of the country in 1939, Italian scholars have published a number of important works under the sponsorship of the Italian Royal Academy and its Center for Albanian Studies, and they continue to do so today.

Although the present Government has made determined efforts to break with the past, older jurists who have stayed on under the new regime and a younger generation of legal scholars have intensified their study of the ancient laws. Particularly now, in the Year of Scanderbeg, there appears to have been a renewed appreciation of the traditional values in Albania, and the hero's stature is held so much in esteem that in memory of his death the people of the areas where he and his family ruled still wear, after 500 years, decorations of mourning in their national garb.[43]

NOTES

[1] Fan Stylian Noli, *George Castrioti Scanderbeg (1405–1468)* (New York, 1947), p. 7.

[2] Jacob P. Fallmerayer, *Das albanische Element in Griechenland*, part II (Munich, 1860), p. 11.

[3] Ibid., p. 76. Fallmerayer based his account of Scanderbeg principally on Marinus Barletius' *De vita, moribvs ac rebus praecipve adversvs Tvrcas gestis, Georgii Castrioti, clarissimi Epirotarvm principis, qui propter celeberrima facinora, Scanderbegus . . . cognominatus fuit* (Argentorati, 1537). Barletius is known to have been highly uncritical of his hero and at times even to have drawn profusely on his knowledge of classical antiquity to embellish Scanderbeg's deeds. Nevertheless, his biography is considered to be a basic and consistent account of the hero's life. See Willy Steltner's "Zum Geschichtsbild des albanischen Nationalhelden George Kastriota genannt Skanderbeg," *Zeitschrift für Geschichtswissenschaft*, 4: 1033–1044 (1956). Bishop Noli, on the other hand, whose work cited above is the most up-to-date detailed biography of Scanderbeg, feels that Fallmerayer's account is critical and "the best story of Scanderbeg ever written."

[4] The date of death is controversial. In his *Das albanische Element*, part III, p. 95, Fallmerayer adduces evidence that this is the true date, and it has been officially accepted as such in Albania.

[5] Noli, *Scanderbeg*, p. 29.

[6] Fallmerayer, *Das albanische Element*, part II, p. 10, 68.

[7] Ibid., p. 30.

[8] Ibid., p. 65.

[9] Ibid., part III, p. 30–31. Scanderbeg introduced general conscription. He also raised a standing army modeled upon the Janizaries, whose effectiveness he had admired during his service at the Ottoman Court. The standing army appears to have never exceeded 2,000 or 3,000 men, the conscript army 10,000. While he suffered two defeats at the hands of the Turks in the course of his military career, he used the wild mountain terrain and guerrilla tactics to such advantage for a quarter of a century that he was able to rout the Turks almost yearly or even more often, though they sent forces against him that are said to have outnumbered Scanderbeg's troops 10 to 20 times. See Ludwig Pastor's *Geschichte der Päpste seit dem Ausgang des Mittelalters* (Freiburg im Breisgau, 1901), vol. 1, p. 721. During these wars Albania's resources were augmented by aid from the Papacy (the Popes appointed Scanderbeg Captain General of the Holy See), King Alphonse of Aragon and Naples, the Kingdom of Hungary, and to a limited extent, Venice.

[10] The tribal laws and social structure were examined at first hand early in the 20th century by the anthropologist Mary E. Durham in her work *Some Tribal Origins, Laws and Customs of the Balkans* (London, [1928]). She traveled far into the highlands of Albania and found that the North Albanian tribes "were the last tribes [in Europe] to preserve autonomy" (p. 13, 63).

[11] Margaret Masson (Hardie) Hasluck, *The Unwritten Law in Albania* (Cambridge, 1954), p. 9.

[12] *Drejtësia Popullore*, 1963, no. 5, p. 64; 1964, no. 4, p. 47; 1965, no. 1, p. 53; 1965, no. 3, p. 66; and 1967, no. 2, p. 52.

[13] Rudolph Sohm, *Institutionen; Geschichte und System des römischen Privatrechts*, 14th ed. (Leipzig, 1911), p. 206.

[14] Ernesto Cozzi, "Le Tribù dell' Alta Albania," *Studime e Tekste*, Juridike no. 1, p. 238.

[15] Sohm, *Institutionen*, p. 207.

[16] Cozzi, "Le Tribù," p. 242–243.

[17] Hasluck, *Unwritten Law*, p. 11.

[18] Cozzi, "Le Tribù," p. 239–241. See also *Kanun i Lek Dukagjini; Codice di Lek Dukagjinit* (Rome, 1941), p. 108.

[19] Hasluck, *Unwritten Law*, p. 38.

[20] Cozzi, "Le Tribù," p. 238.

[21] Hasluck, *Unwritten Law*, p. 51.

[22] Ibid., p. 53.

[23] Ibid., p. 68.

[24] Ibid., p. 131.

[25] Giuseppe Valentini, *Il diritto delle comunità nella tradizione giuridica Albanese*, (Florence, 1956), p. 140–145.

[26] Ibid., p. 173–175.

[27] Hasluck, *Unwritten Law*, p. 130 ff.

[28] Ibid., p. 148 ff.

[29] Valentini, *Il diritto*, p. 181–185. The Turks introduced their own version of the military standard bearer in Albania under the title *bajraktar* (from the Turkish *bajrak*, standard), an officer who levied troops for Turkish armies and ruled the tribes in the areas under their direct control (see Hasluck, *Unwritten Law*, p. 115 ff.).

[30] Ibid., p. 159.

[31] Sir Henry James Sumner Maine, *Ancient Law* (London, 1930), p. 13.

[32] Ibid.

[33] Ibid., p. 14.

[34] See note 18.

[35] Maine, *Ancient Law*, p. 17.

[36] It did not see print until 1933, after Gjeçov's death. See note 18.

[37] The term is of uncertain origin. Some scholars say it derives from the Roman-Byzantine *kanōn*, others ascribe it to an Illyrian root.

[38] Hasluck, *Unwritten Law*, p. 162.

[39] Ibid., p. 219.

[40] Ibid., p. 162.

[41] Koliqi, Ernest, "Il diritto albanese del Kanun e il diritto romano," *Studime e Tekste*, Juridike no. 1, p. 9.

[42] Hasluck, *Unwritten Law*, p. 11.

[43] Other sources consulted for this article are:

Acropolita, Georgius, "Annales," *Corpus Scriptorum Historiae Byzantinae* (Bonn, 1828–), vol. for 1836.

Acta et diplomata res Albaniae mediae aetatis illustrantia, collegerunt . . . Ludovicus de Thalóczy, et al. (Vienna, 1913–18), 2 vols.

Attaliates, M., "Historia," *Corpus Scriptorum Historiae Byzantinae*, vol. for 1853.

Boué, Ami, *La Turquie d'Europe* (Paris, 1840).

Cordignano, Fulvio, and G. Valentini, *Saggi di un regesto storico dell'Albania* (Scutari, 1937–40).

"De rebus Epiri Fragmenta (alias Epirotica)," *Corpus Scriptorum Historiae Byzantinae*, vol. for 1849.

Gegaj, Athanase, *L'Albanie et l'invasion Turque au XVe siècle* (Louvain, 1937).

Hahn, Johann Georg von, *Albanesische Studien* (Vienna, 1853).

Lavardin, Jacques de, *The Historie of George Castriot Svrnamed Scanderbeg* (London, 1596).

Monumenta spectantia historiam Slavorum Meridionalium (Zagreb, 1868–), vols. 2, 5, and 14.

Paganel, C., *Histoire de Scanderbeg ou Turque* (Paris, 1855).

Romanin, S. *Storia documentata di Venezia* (Venice, 1853–61), 10 vols.

Voltaire, F., *Essai sur les moeurs et l'esprit des nations* (Paris, 1963), vol. 4.

A surprise attack by Scanderbeg on a Turkish encampment, as depicted in a 16th-century engraving.

The Dream of the Great Liberator

by HELEN L. CLAGETT

The unity that Spain maintained so successfully for so many years in her viceregal dominions in the New World was completely fragmented in the early 19th century by the Wars for Independence. Never again since that time has there been any enduring regional union among the new republics. Today the term "Latin America" still refers to 20 completely independent, autonomous, and sovereign entities—this despite a century and a half of cooperative living as members of the same organizations, as partners in continental planning and programs, despite a common interest in hemispheric defense, attendance at inter-American and world conferences where they frequently engage in bloc voting, and even despite some evidence of temporarily effective confederation. All efforts to achieve some type of stable political, economic, or fiscal union—whether continent-wide or regional—have failed and the dream of the *Gran Libertador,* Simon Bolivar, remains unfulfilled.

Such reluctance to form a political union appears inexplicable to many in view of the historical antecedents and legal inheritance that bind these nations together. Having a common parentage on the Iberian Peninsula, they enjoy the same cultural background, religion, and languages. Having inherited a common civil system of law, they have enacted legislation and developed institutions so similar that they could easily form the basis for uniform law. As democratic republics, they have adopted similar constitutional principles and evolved parallel political structures. All of this has enabled them at least to correlate their policies and activities on the international scene.

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Captioned "Simon Bolivar/Supreme Chief of the Republic and Captain General of the Armies of Venezuela and New Granada," this portrait hangs in the Eduardo Santos Room of the National Museum at Bogota, Colombia. Engraved by M. N. Bate from a drawing by an unknown artist, it was published in London in 1819.

The very fact that the republics have so much in common may be precisely what has prevented them from becoming a homogeneous body of nations. Often in the past they have demonstrated an intense spirit of individual nationalism, have singly or as a community protested strenuously any outside intervention, even from close neighbors, and have feared the forfeiting of any small portion of their individual sovereignty. Perhaps they also have in common a belief in the old Spanish proverb: "When two friends have a common purse, one sings and the other weeps."

Despite the repeated failures of the past, however, two new efforts are under way in Latin America to effect some type of workable economic union. The present period of history appears to be ripe for this more mature attempt, and although not all of the nations are now participating, the doors are being left open for their possible future adherence. The first organization, the more advanced of the two, is the Central American Common Market (CACM), composed of five Central American Republics; and the second, with headquarters in Uruguay, embraces to date 11 members, Mexico plus 10 South American nations. It is known as the Latin American Free Trade Association (LAFTA).

These movements, unfortunately, cannot be said to have resulted from careful planning aimed at creating just such institutions; neither did they spring forth full-grown from the forehead of an economist Zeus. There has been no headlong rush to discard traditional institutions for the new; on the contrary, the idea of complete integration has been germinating for a long time as a mere item scheduled for discussion in some vague future. The past decade, however, has brought with it an absolute need for united action. It has been urged on the Latin American nations both by international advice and assistance and by their own worsening economic situation since World War II. The Central American and the Latin American market movements were both inspired by the success of the flourishing European Common Market, even while that market was exerting an unfavorable effect on Latin America. The first adverse effect showed up in the form of reduced foreign exchange income. This in turn made it necessary for Latin America generally to restrict its imports of raw materials from the world markets and to increase the amounts of manufactured products they must import. This, of course, weakened their export markets as well.

These conditions have driven the Latin American nations to reconsider what advantages might be gained from collaborative efforts. While the European Economic Community has served them as a good example of what can be accomplished through international economic integration, it has at the same time acted as a horrible warning, forcing them to protect and strengthen their own defenses against the European market by creating their own trade confederations. There is, however, a very wide gap that must be filled between admiration and imitation. Efforts to be undertaken by the Latin American nations represent steps of economic as well as political magnitude, and success will depend on how audaciously they plan and how vigorously they prosecute the plans. There lie before them still many problems to be studied and solved. Only the most optimistic visionary would claim to have in sight the actual attainment of a continental common market. Nevertheless, this objective within the next five years is being urged on the members by their own people and by leaders in the economic, business, and political worlds. It was the sole subject of the Declaration of the Presidents of America, signed at Punta del Este, Uruguay, in 1967.

The United States has from the beginning consistently counseled and supported Latin America's efforts at integration. Today it strongly urges the merging of the two existing associations into one all-embracing market. Naturally, this support does not pretend to be completely devoid of self-interest. It is to the United States' advantage to have neighbors who are politically stable and financially solvent. In the words of our Assistant Secretary of State for Inter-American Affairs, Covey Oliver, as published in the March 25, 1968, *Department of State Bulletin*, "Our well-being and peace is so inextricably tied to theirs [Latin American republics], our close relationship so obvious, that self-interest alone should insure our continued assistance."

There is such a close intertwining of the two Latin American enterprises with the broader hemispheric programs of development, international aid, and related social and economic planning, that it is difficult to know where one begins and another ends. There are inter-American institutions, such as the Organization of American States and the Inter-American Development Bank, with administrative departments devoted solely to economic integration activities. The United Nations Economic Commission for Latin America has been most active in this particular field. In fact, ECLA has been termed the "soul and sinews" of the integration programs in both Central and South America. Monetary assistance is made available through both the private and public sectors of investment interests. The Inter-American Development Bank is also channeling monetary assistance through a "Pre-Investment Fund for Latin American Integration," its objective being "to originate, encourage and finance studies" for promotion of multinational industries. This is aimed at strengthening the infrastructure of the movement, particularly in the form of transportation and communications between and through the countries.

The relationships of the Alliance for Progress and the inter-American system with the Central and Latin American markets are well known. The essential objective of the Alliance is to effect institutional and ideological as well as economic integration of the American Republics, through financing of various programs in either individual nations or on the continental level. All of these institutions have even held joint meetings because of their mutual interests.

The Integration Movement in Central and South America

In Latin America it is only within the past 10 or 15 years that attempts have been made to emulate the European integration of trade and commerce. So far the two American enterprises—the Central American Common Market and the Latin American Free Trade Association—have not borne sufficient fruit to permit an analysis in depth of their individual merits or their ability to endure.

Reduced to the simplest terms, a perfect, economically integrated community on an international scale would presuppose a number of progressively mature steps taken at appropriate intervals. Commencing with a flexible free trade zone, the contracting nations would permit only a narrow sector of their production or industry to be affected by the agreement to give each other preferential treatment, particularly with reference to reductions in tariff duties. The free trade zone is favored, not only because it facilitates trade, but because it does not obstruct a nation's policies and relations with nonparticipating countries.

Following a proper progressive period, during which the number of products subjected to the regime is increased gradually, and other sectors of industry and trade also become affected by such regional operations, the members can then reach out for the second stage, the more formal and rigid customs union. This second step combines the territories of the member nations into a single frontier against the rest of the world in the matter of customs.

The third step would be the full-fledged and complicated relationships of a common market, involving practically all branches of industry, trade and finance, and falling just short of constituting a supranational political entity. Central America claims to have reached the last stage but appears to partake far more of the customs union than of other elements of the market. It is, however, much more advanced than the loosely connected Latin American association.

Actually, "common market" should be more liberally defined. The European experiment has been successful not only because of the industrial maturity of the member countries but also because there are no insurmountable problems on their home fronts to prevent them from giving full throttle to international trade interests. These countries have not hesitated even to give up some degree of national sovereignty in order to gain legislative, judicial, and executive powers on the community level. But the regional organizations being discussed for Latin America, Africa, and parts of Asia will include countries that are underdeveloped in-

dustrially and lack such essential elements as population, size, wealth, and technical preparation. It would be unrealistic to compare even a potential Latin American market with that of Europe.

Latin America has had to meet a disproportionate number of economic and other obstacles, including such basic ones as unequal distribution of wealth, entrenched economic dependence on a single product such as oil or coffee, uneconomic distribution of industrial centers, and lack of technically trained manpower, not to mention an absence of middle-class population in some countries and periodic internal political strife. Even a natural disaster, such as an earthquake or flood, can temporarily disrupt the equilibrium of a Latin country's entire economic structure.

For the layman, descriptions of the general problems facing Latin American integration and the efforts being made to overcome them may be found in an analytical work by Miguel S. Wionczek under the title *Latin American Economic Integration: Experience and Prospects* (New York, Praeger, 1966), and more briefly in John W. Clark's pamphlet *Economic Regionalism and the Americas* (New Orleans, Hauser Press, 1966).

The legal and economic aspects of international integration must go hand in hand. Legal documents such as multipartite treaties generally outline the framework within which the economic activities must operate, implemented by protocols and complementary agreements. Each nation finds that it must adjust its domestic legislation to its new international commitments or harmonize the latter with already-existing international agreements made with nations not members of the new organization. Law is also involved in endowing the new community and its institutions with corporate personality and powers, and in the preparation of legal instruments that will be effective across frontiers in such matters as tariffs, taxes, antitrust regulations, labor, communications, contracts, transportation, and diplomatic and consular relations.

Also essential to any success in these novel international ventures is an interaction between the politician and the economist, a relationship which has not prospered as well in Latin America as the coordination between the lawyer and the economist. More progress has been demonstrated in the political area in the Central American organization, but there is yet much to be accomplished in perfecting economic growth through political stability, or, on the other side of the coin, in developing stable political organs based on economic progress.

The Central American Common Market

As pointed out above, the Central American organization no doubt falls short of being a true "common market," as the term is applied to the European Community. Contrasted with the less developed free trade organization in Latin America, however, the Central American Common Market seems to be appropriately named.

The legal and institutional structure of Central America's economic integration had been evolving for almost a decade before the term "common market" was applied to it in late 1960. However, all the earlier interregional agreements and even the related political conventions should be considered as a unit in analyzing the present status of the organization. The experiment has been described by numerous authors, both lawyers and economists, but perhaps the simplest account of its creation and growth is in a chapter contributed by Julio Prado García Salas to the composite work *Historia y Futuro de la Economía Latinoamericana* (México, 1967). Briefly, Dr. Prado divides the development of the Central American operations into four stages, commencing in 1951 with the creation of a Committee on Economic Cooperation of the Central American Isthmus. Following the initial activities of this Committee, the next three steps consisted of interregional treaties and conventions, the first consisting of bilateral compacts, and the next two of multilateral treaties. The first series of multinational pacts are described as representing the "gradual" integration process, and the second "accelerated" action.

The United Nations early evinced its interest in the creation of a hemispheric common

318-298 O—68——6

market. Its Economic Commission for Latin America (ECLA), meeting in Mexico City in 1951, adopted a resolution expressing interest in the "development of the agricultural and industrial production [of Central America] and the transportation systems of the respective countries in such manner as to promote the integration of their economies and the formation of broader markets through interchange of their products, coordination of their development programs, and the creation of enterprises in which all or some of these republics have interests."

On a bilateral basis between 1951 and 1955, five Central American Republics negotiated compacts with neighbors until they were bound together in a complicated network of conventions. Panama, from the beginning, remained outside this union and even today is not a member in spite of continuing official talks about its joining in all or part of the association activities. At present, there are only some peripheral agreements between Panama and the Market that tie it in with the community operations.

Not until 1958 was the basic Central American Free Trade and Integration Treaty drafted and ratified by four of the five Republics. Shortly thereafter Costa Rica signed, making it unanimous. Among its basic clauses was one setting a 10-year term for the gradual establishment of a "common market" organization, that is, a 1968 goal. On December 13, 1960, when the 1958 treaty failed to provide fully adequate machinery to accomplish the objectives, a second multinational treaty was adopted which contained provisions for accelerating the customs union and integration processes and is today considered the true basis of the market organization.

Also in 1960 a partial supranational political structure brought political coordination to the five republics and facilitated the economic progress being made in the market. This "Charter of San Salvador," which was revised in 1962, created the Organization of Central American States (ODECA) and came into full force through the necessary number of ratifications in 1965. It established among the member nations legislative, administrative, and judicial ties in the form of various councils including a Central American Court of Justice with limited powers.

Many of the earlier preliminary agreements dealt with such specialized aspects of interregional relations as transportation, traffic and motor vehicles, credit facilities, and water and other power resources, but they were considered important in that they formed the infrastructure of the market itself. Another pact dealt with the subject of joint financial and banking operations by providing a Central American Economic Integration Bank, to channel resources within their own territories or those coming from private and public foreign sources into integration activities. Other conventions instituted a central school of public administration to train needed management and technical staff at many levels and created an Institute for Industrial and Technological Research. A feature of interest to investors is the Agreement on Central American Integrated Industries, which awards free trade privileges to qualifying industries. Although this convention was signed in 1958, it was not truly effective until 1965, following a protocol celebrated in January 1963. With ratification by three of the five member nations, it became enforceable, and the first selection of "integrated business" was commenced. Requirements were given for qualifying as applicants, such as the necessity for total investment and the meeting of standards for quality and quantity of production, and prices. In return the applicants who could qualify were guaranteed fiscal incentives of various types, including tariff protection and privileges of location and expansion in their field.

Another outstanding satellite convention concerns the Fiscal Incentives Agreement, which supersedes five domestic statutes of the same nature. Awards are based on use by industry of more modern and efficient processes, the replacing of outmoded equipment, increased production of essential goods, or production which serves to decrease imports or increase exports. Concessions are granted in the form of tax exemptions and other benefits, including special facilities for importing spare parts and new machinery.

An official of the United Nations Economic Commission for Latin America, Carlos M.

Castillo, has written a work entitled *Growth and Integration in Central America* (New York, Praeger, 1966), which describes clearly the objectives and results under many of these conventions. A more analytical work in Spanish, entitled *Derecho, desarrollo e integración regional en Centro América* (1967), emphasizing the legal aspects of the subject, was recently prepared by the Nicaraguan attorney Ernesto Cruz, under commission to the Secretariat of the Organization of the Central American States.

By the year 1968 visible progress had been made by the Central American Common Market and its organization had become part and parcel of the economy of the isthmus, as well as of the individual components. It would appear that this organization is better prepared to join in an expanded market organization to cover the southern part of the hemisphere than its counterpart in Latin America. In addition to constituting a smaller group of nations with a more or less similar status of development, Central America also had the benefit of an earlier start at integration and had already enjoyed periods of political confederation in the past. These nations have become self-sufficient in some staple goods, effectively balancing their surpluses against their shortages and are now prepared to specialize further and to make an equitable distribution of their resources.

Various authors on the subject agree that the results are impressive within such a small framework. Some attribute success to the fact that, learning from experience, the architects did not seek first a political union but built dependable infrastructures in the legal, social, and economic fields.

The Latin American Free Trade Association

In response to the accomplishments of a working group appointed in 1958 by the United Nations Economic Commission for Latin America, a number of representatives of Latin American nations met in Montevideo, Uruguay, in early 1960. Their principal objective was to consider the broad subject of interregional economic integration, particularly the feasibility of creating a common market organization similar to those functioning in Central America and in Europe. Out of this conference came the Treaty of Montevideo, which was signed on February 18, 1960. It recited as its immediate purposes the institution of a free trade zone and the creation of an association, now popularly known as LAFTA, to supervise and implement the treaty provisions.

The Treaty of Montevideo was referred to as a "timid form of integration" by the Inter-American Development Bank in a study entitled *Factores para la integración latinoamericana* (México, 1966). It purports to initiate a gradual and reciprocal reduction of duties, charges, and other restrictions on interregional trade, to be completed within a 12-year period, that is, by 1973. The ratifications of the South American nations of Argentina, Brazil, Chile, Peru, and Uruguay, with that of Mexico, put the 1960 treaty into effect very soon after it was adopted, and later Paraguay became a member on a "favored treatment" basis as an underdeveloped economic unit. On September 30, 1961, Colombia adhered to the treaty and Ecuador followed on November 3. After much serious consideration, Venezuela finally became a member on August 11, 1966. The 11th membership was that of Bolivia, on February 14, 1967. The treaty remains open for adherence by other Latin American nations.

The organization conceived in the treaty was intended to be merely an initial process leading toward a broader Latin American Common Market, as stipulated in its Article 54. LAFTA was created as a legal entity, with corporate powers to contract, to sue and be sued, to acquire and dispose of real and personal property, to hold and transfer funds, and in other ways to function as an international public corporation. In contrast to the complicated Central American organization, LAFTA was given only two organs, a Conference of Contracting Parties and a Standing Executive Committee. The former constitutes the policy-making body, with responsibility for conducting the annual "negotiation" meetings and implementing treaty provisions. At the annual meetings tariffs are reviewed, additional products are subjected to the regime

of the "national lists" while others are removed, and generally the organization's accomplishments are reevaluated.

The Executive Committee, with representatives of each of the member countries, maintains headquarters with a secretariat in Montevideo and has been assigned such duties as finance administration, programming, and liaison with members and with other entities. It is also empowered to create advisory committees of experts for legal and technical matters, to maintain contacts with inter-American and international institutions on related programs and matters of interest, and to obtain loans, advice, and technical assistance. Intelligence is continuously exchanged on statistical matters, changes in monetary and tax legislation, administrative rulings and practices, production subsidies, prices and costs, and similar data.

Unlike the Central American republics, which have had similar economic status and historical and geographical ties in the past, the members of LAFTA include a number of more highly developed nations as well as a few that are economically underdeveloped. This has made it necessary to create special categories and treatment for the latter, under Protocol 5 of the Treaty of Montevideo, in order to assist them in accelerating their growth. Otherwise, the atmosphere within which this organization functions is one of reciprocal and unconditional "most favored nation" treatment. The "underdeveloped" category is applied at present to Paraguay, Ecuador, and Bolivia and, strangely, also to Venezuela. Although that country enjoys a universal reputation as one of the wealthiest of nations, it delayed joining until recently because it wished to be accorded special treatment. Justification was based on the fact that its wealth is produced almost entirely from a single industry—oil—while the remainder of its economy has remained more or less neglected. Since petroleum and petroleum products are, pursuant to Protocol 4 of the Treaty, exempted from integration insofar as concerns any agreements already entered into, the remainder of the commerce and industry of Venezuela qualifies as "underdeveloped" for preferential concessions.

Bolivia, although represented at the signing of the Treaty of Montevideo in 1960, did not ratify it until years later. Bolivia felt that to forego its beneficial trade with nations outside of Latin America would imply subsidizing the trade of its more affluent neighbors. In the end, it was accorded special treatment benefits to compensate for any loss entailed by its membership.

The treaty's target dates for the elimination of tariffs on an interregional basis and for the forming of a common market now appear to have been overly optimistic. There have been periods of stagnation, political reverses, and also excessive protectionism for some products and industries in the individual nations. Little progress has been made in strengthening the mechanics of across-the-border systems of transportation and communication, eliminating multiple monetary and exchange rate systems, creating pools of trained personnel and manpower forces, and other elements basic to an operation of this magnitude. Yet, in spite of these obvious lacks, the goals are constantly being urged on the member nations, whether they are ready for them or not.

It cannot be denied that some progress is being made, although it is more gradual than planned. Some authors excuse the delays on grounds that the LAFTA architects were too ambitious, the goals too high, and the time in which to attain the goals too brief. Although aware of the existing weaknesses, the planners attempted to impose on the nations a preconceived program to be put into operation without any testing. Encouragement should be given to the LAFTA nations even though they are progressing at a slower pace than planned. It must be remembered that the processes are complex and that lasting bonds are being created which will eventually combine the desirable factors of a unique continental market.

The organization and functions of LAFTA are outlined in a publication of the U.S. Tariff Commission entitled *The Latin American Free Trade Association* (Washington, July 1962). The legal aspects are brought out more substantially in two professional publications. The first is a pamphlet distributed by the Consejo Federal de Inversiones, a public investment agency in Argentina, entitled *Zona*

Latinoamericana de Libre Comercio; reseña jurídica (Buenos Aires, 1963). The second contains some excellent papers and addresses delivered on legal aspects of the new organization during a seminar of lawyers in Montevideo, representing the Inter-American Bar Association and the Uruguayan Bar Association and Law School. It bears the title *Aspectos legales de la Asociación Latinoamericana de Libre Comercio* (Montevideo, 1966).

The Ultimate Goal—A Continental or a Hemispheric Market?

The Central American and the Latin American organizations have officially but informally maintained liaison through their secretariats, but their contacts have usually been limited to matters of information and intelligence rather than action. The two enterprises likewise maintain links with the broader inter-American system and with various social and economic programs, as well as with United Nations and hemispheric institutions. Attempts have been made to persuade reluctant nations to join one or the other of the organizations, with the idea of later building on these two foundation stones an organization to be known as the Latin American Common Market, which would embrace all republics from the Rio Grande to Tierra del Fuego. The dream of some builders goes even further, to include Canada and the United States. An association of this character is seen as necessary to compete successfully with other existing and potential regional economic organizations.

As reported above, the Central American enterprise is at present a going concern, enjoying some fair measure of success, while the Latin American organization is much less so. Nevertheless, the gaze of the more imaginative planners is being kept steadily on the ultimate objective and they are willing even to set time goals. Several legal and economic documents pertinent to the creation of this Latin American Common Market have appeared, apparently in the hope that repetition may persuade and convert others or perchance actually set the wheels in motion.

The Central American enterprise did not originally project any expansion of its scope beyond the possible addition of Panama to its membership. But the Montevideo Treaty, creating the Latin American Free Trade Association in 1960, included in its Article 54 the provision that "the Contracting Parties shall make every effort to direct their policies with a view to creating conditions favorable to the establishment of a Latin American Common Market. To that end, the Community shall undertake studies and consider projects, and shall endeavor to coordinate its work with that of other international organizations."

In 1964 this idea was developed in greater detail in the LAFTA document labeled "Resolution 100," adopted at the Fourth Annual Meeting of its Conference of Contracting Parties and based on "The fundamental objective of the Montevideo Treaty [which] is to promote the economic and social development of the Contracting Parties by means of the gradual establishment of complementary economies and economic integration." The entire text of these "Basic Directives for Economic Policy" in English translation appears in the July 1965 issue of *International Legal Materials*, the organ of the American Society of International Law in Washington. At an early summit meeting in 1964 it was again emphasized that "a maximum effort to expedite the achievement of a Latin American Common Market" must be made by using the existing processes and machinery already available to reach this most important goal "to expand and diversify trade among the Latin American countries and thus contribute to the economic growth of the region."

An exchange of communications in 1965 further highlighted the urgency felt by the hemisphere leaders, and at the same time expressed dissatisfaction with advances made. In response to an open letter from President Eduardo Frei of Chile criticizing the lack of progress, a group of faithful supporters of economic integration prepared a report which, although commencing with the warning that failure to advance "is jeopardizing the pace and the very meaning of Latin America's economic and social development and shaking its political life to its foundation," yet on the

whole was favorable in tone and in its prognostication of eventual success. This report set forth the steps needed to realize interim goals and thus the final objective. The optimistic integrationists consisted of Dr. Raúl Prebisch, Secretary General of the United Nations Conference on Trade and Development (UNCTAD), and members of the staffs of the Inter-American Development Bank and the Alliance for Progress. The full text may be consulted in the United Nations publication *Proposals for the Creation of the Latin American Common Market* (New York, UNCTAD, April 15, 1965). These authors hold that "Without joint action we can make no headway towards solving these grave problems at the international level. Our action must also be for the purpose of securing greater political influence internationally. A new historical dimension is emerging—the dimension of the developing world."

Between 1965 and 1967 international cooperation made little progress, and business, professional, and public sectors continued to exert pressure for it. At a meeting held in Mexico in 1966 a large conference of businessmen and lawyers from both Americas, known as the Inter-American Council for Commerce and Production, adopted proposals expressing the support of their association for accelerated economic integration and the eventual creation of a Latin American Common Market.

At a summit meeting in April 1967 of the Chief Executives of the American Republics, including the United States, held at Punta del Este, Uruguay, an important document was signed under the heading "Declaration of the Presidents of America." The English text appears in the May 8, 1967, issue of the *Department of State Bulletin*. It resolved to make the common market a reality within this generation and, couching its message in the most urgent terms, determined "to create progressively, beginning in 1970, the Latin American Common Market, taking into consideration the interests of the Latin American countries not yet affiliated with these systems." Attached to this Declaration was an "action program," a lengthy document containing detailed provisions not only on the principles and goals but on numerous measures that would enable the nations to fulfill these objectives. This action program contained fixed timetables and outlined a truly tremendous task.

Commentators on the projected Latin American Common Market vary from a small number of optimists to a greater number of pessimists, or what might be called "wait-and-see-ers." Some express the fear that the stepped-up pace that is being urged would only serve to destroy the stability already gained, thus enabling a take-over of power by dictators. Others hold the opinion that the nations are too small for them to hold their own while developing a common market. The term "common market" used in this connection again appears to refer to an organization of the complexity of the European one rather than one adapted to this hemisphere.

The United States political economist Wendell C. Gordon, on page 334 of his *Political Economy of Latin America* (New York, 1965), comments realistically on this ultimate goal:

> It is likely that there cannot be any really effective implementation of the free trade association without some quite substantial abridgment of the sovereignty of various of the twenty or so Latin American countries. . . . The Latin Americans, in spite of much greater language similarity and the general absence of international wars in their historical backgrounds, have generally roundly denounced any implication that the free trade association might lead to closer political ties among the countries. This is odd.

Senator Jacob Javits, however, whose interest has long been identified officially and privately with economic and social development under law in Latin America and, particularly in the past decade, with efforts at economic integration, has stated that he is hopeful of seeing the realization of a single common market in the near future. He appears to hedge his bets somewhat on the particular time, however, in his article "Last Chance for a Common Market" appearing in the April 1967 issue of *Foreign Affairs*. He points out that there is truly little choice facing Latin America today "between the risk of instability caused by rapid economic progress and the possibility of violent revolution born out of frustration and anger." A strategy to

face these risks, the Senator believes, "must include the creation of a genuine Latin American Common Market." He concedes that progress so far has been discouraging and that "It is generally agreed that the rate of economic development in Latin America is dangerously slow. After five years of the Alliance for Progress, and six years of two experiments in economic integration, the continent is still faced with serious food shortages, inadequate housing, insufficient industrial production, and limited internal and external markets." At the same time, Senator Javits looks even beyond such a common market to negotiations leading to a Western Hemisphere Free Trade Area, including Canada and the United States.

One of Senator Javits' early predecessors in the United States Senate would no doubt have been overjoyed at the enthusiasm being displayed on the topic of free trade, and particularly at the words of Senator Javits. In addressing the Senate on February 2, 1832 (see the *Register of Debates in Congress* for 1833, vol. 8, pt. 1, p. 266), Henry Clay, a confirmed pessimist on this point, proclaimed that "The call for free trade is as unavailing as the cry of a spoiled child in its nurse's arms for the moon, or the stars that glitter in the firmament of heaven. It never has existed; it never will exist."

Latin American commentators, whether lawyers, economists, or statesmen, appear to be genuinely interested in efforts toward a common market but, for the most part, they are not optimistic of its attainment in the near future. An exception may be found in a recent report prepared by experts on the staff of the Inter-American Development Bank, in the Bank's publication *Factores para la integración latinoamericana* (México, Fondo de Cultura Económica, 1966). The expected progress up to 1980 is charted in an attached "Chronogram of the Economic Community of Latin America (1965–1980)."

At a seminar of Latin American lawyers discussing the role which their profession should and could play in economic integration, the attainment of the common market goal was more lyrically expressed by the representative from Uruguay, José G. Sarmiento Núñez. As reported by the Inter-American Bar Association in the seminar proceedings entitled *Aspectos legales de la Asociación Latinoamericana de Libre Comercio* (Montevideo, 1966), Dr. Sarmiento said:

> In Latin America, the spirit of union and fraternity inspired by the glorious action of our Liberators, has never been and will never be extinguished. . . . This is the America of today, conscious of her historic destiny, who has now added her voice to the universal chorus, to let the whole world know of her irrevocable determination to associate in a common effort in order to attain the most accelerated economic progress possible, a broader social justice for her peoples.

Walter Krause, in his *Economy of Latin America* (Iowa City, University of Iowa, 1966, p. 175), comments on the future of Latin America in what he terms its "new revolt." Summarizing the present status, he says that "In both instances, economic and political, the tone is that of Latin America as a *single* entity. Perhaps the dream of Simon Bolivar will remain a dream for yet a while. However, this much is clear: whatever still remains to be done, actual realization of what Bolivar held out as a dream is *closer* today than at any time heretofore." Also recalling the Great Liberator's hopes, the President of the United States addressed his colleagues at the 1967 summit conference at Punta del Este on the urgency of creating this common market, stating, "You will design and join together great multinational projects that will open up the inner frontiers of Latin America. These will provide—at last—the physical basis of Simon Bolivar's vision of continental unity."

Recent Acquisitions of the Manuscript Division

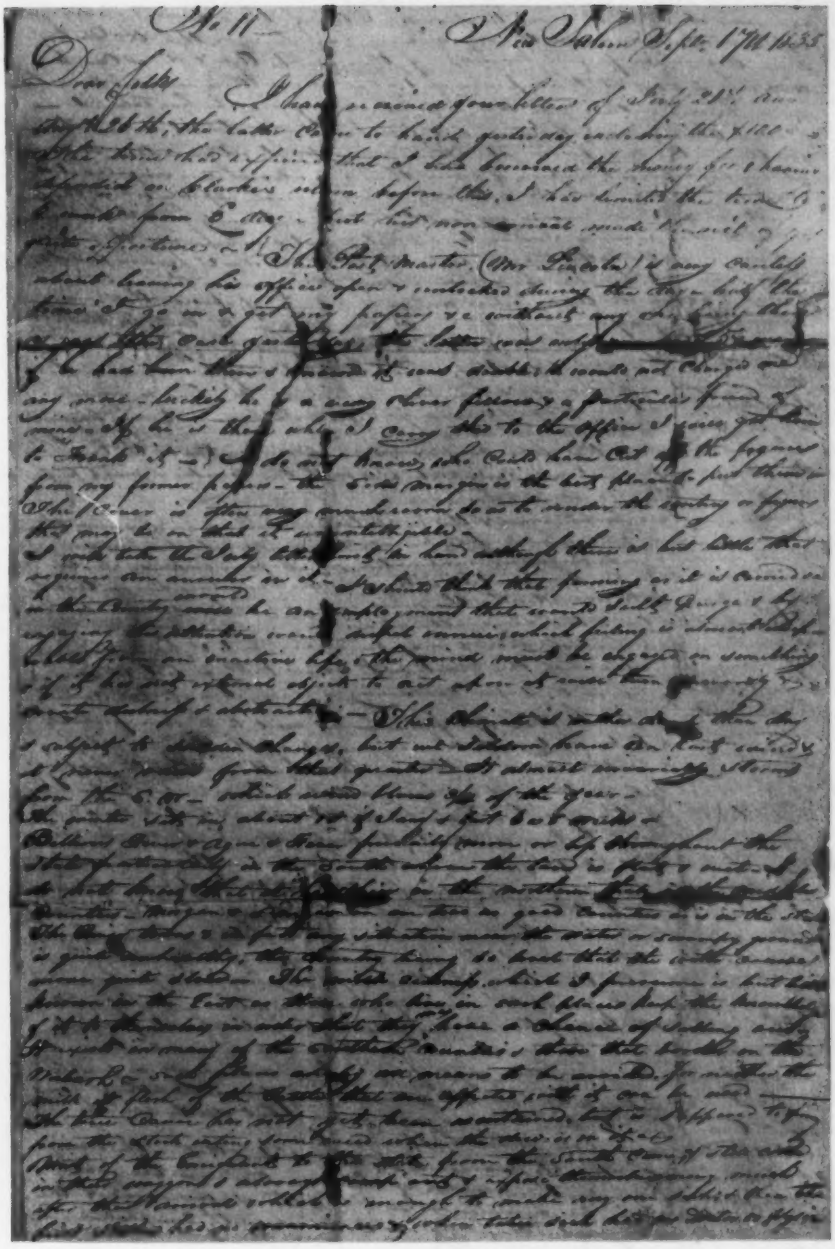
by the Staff of the Division

The year 1903 will undoubtedly remain the unapproachable summit in the acquisition of historic manuscript collections by the Library of Congress. In that one year the Library became the repository of the papers of George Washington, Thomas Jefferson, James Madison, James Monroe, Benjamin Franklin, and Alexander Hamilton. The year 1967, nevertheless, was a most notable year for the Library's Manuscript Division, perhaps the single most notable year in its history—except for 1903.

If so, it marked a fitting climax to the professional career of David C. Mearns, who retired in December upon the completion of 49 years in the Library of Congress, during the last 16 of which he served as Chief of the Manuscript Division. His tenure in that position far exceeded that of any of his predecessors. Appropriately, Mr. Mearns contributed to the *annus mirabilis* by adding his own personal papers to the resources of the division in which he concluded his remarkable Library career.

Among the many high points of the year is the acquisition of one of the best known pieces of Lincolniana. In the 40-odd years since its first appearance, the letter of Matthew S. Marsh, written to his brother from New Salem, Ill., on September 17, 1835, has been cherished as the only contemporary description of Abraham Lincoln as the postmaster of that frontier village. According to Marsh, Lincoln was "careless about leaving his office open & unlocked during the day—half the time I go in & get my papers etc without any one being there." But, he continued, "he is a very clever fellow & a particular friend of mine. If he is there when I carry this to the office I will get him to 'Frank' it." Lincoln not only franked the letter, indicating his higher regard for the claims of friendship than for the technicalities of postal regulations, he also addressed it. The Marsh letter was purchased at the sale of the Justin G. Turner collection.

Contributors to this report include John C. Broderick, the late Lloyd A. Dunlap, Paul T. Heffron, George O. Kent, John McDonough, Paul G. Sifton, and Gayle Thornbrough.

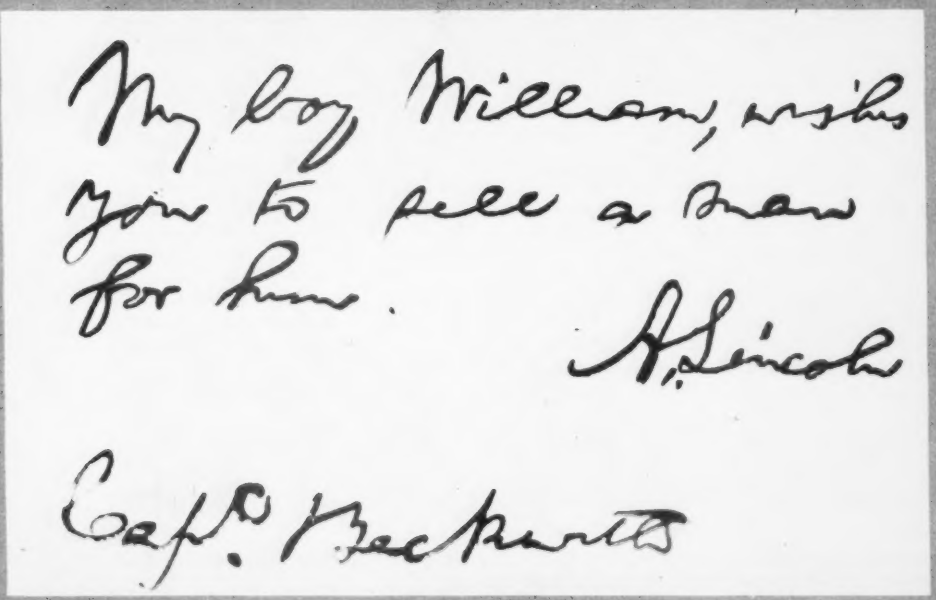


First page of Matthew Marsh's letter to his brother George, in which he refers to "The Postmaster (Mr. Lincoln)."

An auction catalog from Sotheby's of London described this item as: "'My boy William wishes you to sell a man for him. A. Lincoln.' (evidently referring to the sale of a slave)." Lincoln scholars at the Library of Congress studied the note when the Library acquired it in 1967 and decided that the President had written the word "mare" rather than "man."

Confusion has occurred before in reading Lincoln's usually legible handwriting. A notable example is found in his letter of October 17, 1861, to Maj. George D. Ramsey. The text in Carl Sandburg's Lincoln Collector *(1949) reads: "The lady—bearer of this—says she has two sons who want to work. Set them at it, if possible. Wanting to work is so rare a want [merit?], that it should be encouraged." After prolonged discussion and without complete agreement, the editors of the* Collected Works of Abraham Lincoln *concluded that Lincoln wrote "merit" and not "want."*

The note shown here is almost certainly directed to Amos Beckwith, a supply officer with the War Department. Lincoln did not date the note, but he must have written it between May 10 and September 29, 1861, while Beckwith was a captain. "My boy William" may refer to Lincoln's 10-year-old son, William Wallace, or to William H. Johnson, an Illinois youth who worked as the President's valet. "Willie," who died on February 20, 1862, and his brother "Tad" kept cats, a dog, goats, ponies, and even a turkey at the Executive Mansion, but there is no evidence of a mare. According to some sources, Mary Todd Lincoln was given a pair of splendid black carriage horses, and it can be speculated that they replaced a more sedate animal.



Unlike 1903, the year 1967 was not distinguished by additions to the Library's collections of Presidential papers. Instead, the hallmark was variety. Major additions were made to the Library's original sources in the fields of political, judicial, military, scientific, and cultural history. Dozens of important collections were received, any one or two of which would have been sufficient cause for considerable gratification. As always, the preponderance of material received during the year came as gifts from public-spirited citizens, whose generosity year after year substantially enriches the national manuscript collections.

Because of the wealth of material received in 1967 and because of the desirability of conveying in depth the quality of selected representative collections, the format of this report differs from that of earlier reports in this series. In the text that follows, a few collections have been highlighted to suggest their research potential and relationship to other manuscript collections in the Library. Limitations of space decreed that only a few collections could be given detailed treatment while others, equally important, receive only passing notice. It is hoped that this loss will be more than offset by the penetrating view the report provides of a few major collections.

Appended to the text is a list of all principal manuscript acquisitions in 1967. The reader will find there the essential information about all new collections as well as significant additions to existing collections.

Diplomatic, Military, Political, and Social History

For the Colonial, Revolutionary, and National periods there were few new collections or substantial additions to existing collections. Even a small group such as the Humphreys-Lear letters, however, affords deepened insight into events of the early Republic.

Humphreys-Lear Letters

In nine letters written by David Humphreys, Revolutionary soldier, aide to Washington, and diplomat, to Tobias Lear, Washington's confidant and secretary, dated between 1791 and 1796, there are three recurring themes: Humphreys' devotion to and admiration for the Commander in Chief and President, his patriotism and enthusiastic concern for the advancement of his country, and, at the same time, his enjoyment of the cosmopolitan society in which he mingled in Lisbon while serving first as special agent, then as Minister Plenipotentiary to Portugal.

That Humphreys was both a historian and a poet is evident in the style and literary quality of his letters. The letter of November 22, 1791, both reveals his concern about his country and contains a warning:

> My last Papers from Philadelphia are to the 8th of last month. In one of which there is a more minute account of the situation of your new federal City than I had before seen; & in another, the Report of Genl Wilkinson's expedition against the Indians. I hope to hear soon of the complete establishment of tranquility on the frontiers. So long as there shall be any foundation for reports of a different kind; many of the European Nations will wish to make use of them to prevent emigration to America—Let me hear how prosperously every thing prospers, because I take singular pleasure in being the Organ of announcing our prosperity.

A year later, November 28, 1792, commenting on European unrest in contrast to American tranquility, Humphreys reflected that "the consciousness the President must feel of having done much toward producing this ameliorated state of public affairs, and a persuasion that his services are still almost as necessary as ever, will, I flatter myself, induce him to accept his office again."

In June 1793, expressing the hope that the Indian war in the Northwest Territory was over and that there was "less of the Spirit of Party than there has formerly been to impede or lessen the almost unparalleled prosperity of the U.S.," he continued,

> Could I speak in a voice of thunder & with the power of conviction, my first essay would be to make the People of the U.S. sensible how enviable their lot is, & how much superior to that of any other Nation under Heaven. . . . The prudence of the President is our great resource; you may rely upon it, the opinion entertained of his integrity & abilities abroad as well as home will have a powerful influence in preserving our tranquility, & giving such stability

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to our Government that it cannot be easily shaken, when he shall be no more.

In a lighter vein in the letter of November 28, he named the notables who had been in Lisbon and commented, "I am obliged to be in Society with those who have from 12 to £20,000 Stirling a year to Spend. . . . In short we Americans must be obliged by dint of good taste to make some amends for want of large incomes." Then Humphreys added soberly, "I have endeavoured, by an unremitting & rigid attention, to conduct myself in every respect in such a manner as not to disgrace myself or my country."

Two 19th-century collections of interest that were acquired during the year are the papers of the engineer and military educator, Alden Partridge, and an assemblage of correspondence of the Rodgers, Meigs, and Macomb families.

Portrait of Commodore John Rodgers by Charles W. Peale, which hangs in the second-floor banquet room at Independence Hall, Philadelphia.

Alden Partridge Papers

Alden Partridge (1785–1854) is generally recognized as the founder of the present system of elementary and secondary military education. Partridge himself studied at West Point and after being commissioned in 1806 remained there as an instructor in engineering. For a time after the War of 1812, he was acting superintendent of the Military Academy, but, as an outgrowth of a struggle with Sylvanus Thayer, who was appointed superintendent in 1817, he was court-martialed that same year and cashiered by the Army. Although all punishment was remitted by President Monroe, Partridge resigned from the Army.

Shortly thereafter he established a military academy at Norwich, Vt., the forerunner of the present Norwich University, now at Northfield, Vt. During the remaining years of the first half of the 19th century Partridge busied himself in advancing throughout the country the educational advantages of the military academy. At various times he was personally associated with schools and academies in Virginia, Pennsylvania, Delaware, and New Hampshire.

The collection of his papers acquired by the Library amounts to more than 600 items, principally letters received by Partridge from 1808 to the 1850's. The early West Point letters reveal much about the type of cadet in residence there, problems of student life, and matters of parental concern. Official communications from the Department of War deal with aspects of operation of the Academy.

Some letters of the 1812–15 period relate to military operations in the War of 1812, although Partridge's own role does not seem to have been a significant one. Postwar letters again concern student life at West Point and culminate in correspondence and other documents bearing on Partridge's court-martial. The opposition to Sylvanus Thayer is strongly reflected in the collection.

Partridge's association with Norwich and other institutions during the remainder of his life is rather well documented in correspondence that deals with the difficulties involved in the development of military education, from the point of view of educators, students, and parents. Two manuscript volumes are included in the collection. Both contain rolls of cadets at several of the institutions with which Partridge was associated, and one volume has an interesting library journal. Although the strength of the collection lies in the perspective it offers on early military education, there are also a few letters written by correspondents as prominent as John C. Calhoun, Hugh Legaré, James Gadsden, Oliver Wolcott, Edmund Burke, John Armstrong, Horatio Seymour, Duncan McArthur, and Gen. James A. Swift.

*Rodgers-Meigs-Macomb Family Papers** [1]

Much larger, consisting of approximately 6,000 items, and much more complex are the papers of the Rodgers-Meigs-Macomb families. Placed in the Library by Capt. and Mrs. Alexander Macomb of Washington, D.C., the collection ranges in time from near-current papers of Captain Macomb, principally relating to his naval career, all the way back to the opening years of the 19th century.

The early papers are distinguished by an extensive exchange of letters between Commodore John Rodgers (1773–1838) and his wife, Minerva Denison Rodgers. Although personal letters of this type predominate, there are also letters from other members of the family, from fellow naval commanders, and from Tobias Lear. The several Lear letters were written from Tripoli and from Algiers, where Lear served as consul general, and concern maritime and diplomatic affairs of the Barbary States.

The Manuscript Division's existing collection of Rodgers papers, and Rodgers materials in the collections of the Naval Historical Foundation, have been significantly enhanced by this acquisition.

The Meigs portion of Rodgers-Meigs-Macomb family papers contains several large groups of letters written by Montgomery C. Meigs, husband of Louisa Rodgers, daughter of Commodore John Rodgers. Meigs, a soldier and engineer, was in charge of the construction of the Capitol and was quartermaster general of the Union Army throughout the Civil War. As in the case of the Rodgers materials, most of the Meigs letters are family letters. They date from 1847 and continue, with gaps, to the year of General Meigs' death, 1892.[2]

In addition to the numerous letters of Capt. Alexander Macomb, the Macomb family is further represented by a long, interesting series of letters written by Col. John N. Macomb, who had married Ann Minerva Rodgers, another daughter of Commodore John Rodgers. Written principally beween 1857 and 1859 and addressed to his wife, John Macomb's letters describe in detail his activities as a captain of topographical engineers in the Southwest, where he directed the construction and improvement of roads near Santa Fe and Albuquerque, N. Mex.

The range of years covered, the prominence of the families involved, and the abundance of cognate collections in the custody of the Library make the Rodgers-Meigs-Macomb family papers a significant addition to the Library's resources.

As the appended list demonstrates, the Library's resources for the study of 20th-century history were abundantly enriched during 1967. Among the most important collections bearing on recent history are the Felix Frankfurter and the James M. Landis papers.

Felix Frankfurter Papers

Several years before his death, Mr. Justice Frankfurter provided for the ultimate division and disposition of a voluminous body of private papers. His Supreme Court papers were left to the Harvard Law School, an institution for which, in his own words, he had feelings approaching reverence. The Hebrew University in Jerusalem was selected as the repository for papers documenting his involvement with Palestine and the Zionist movement. To the Library of Congress he gave

what were designated his personal papers; and how natural the choice. For as he once confided to his student and friend Archibald MacLeish, "no institution in this town is closer to my concern than the Library of Congress."

The historian and scholar will find the Frankfurter papers in the Manuscript Division an extremely valuable source for a variety of studies. Few men of his generation were so closely connected with the significant political and social movements of the 20th century, or so intimately acquainted with important leaders in every area of American society, as Felix Frankfurter. Deeper insight into his own character and a more comprehensive interpretation of the moving forces of the period should result from a careful study of the more than 42,000 items that constitute the collection.

The papers, of course, will be of primary interest to judicial biographers and students of legal history. Indeed, judicial biography was a lifelong concern of Justice Frankfurter, and he was always amenable to conversation or correspondence on the subject. Often he lamented the lack of adequate biographies of Supreme Court Justices, although he recognized the difficulties. Judges are thinkers, not doers, he wrote; judges are seldom men of great literary talent and do not always write copious letters of self-revelation. While one can infer much from a judge's opinions, how much more opportunity for knowing him comes through a voluminous correspondence.

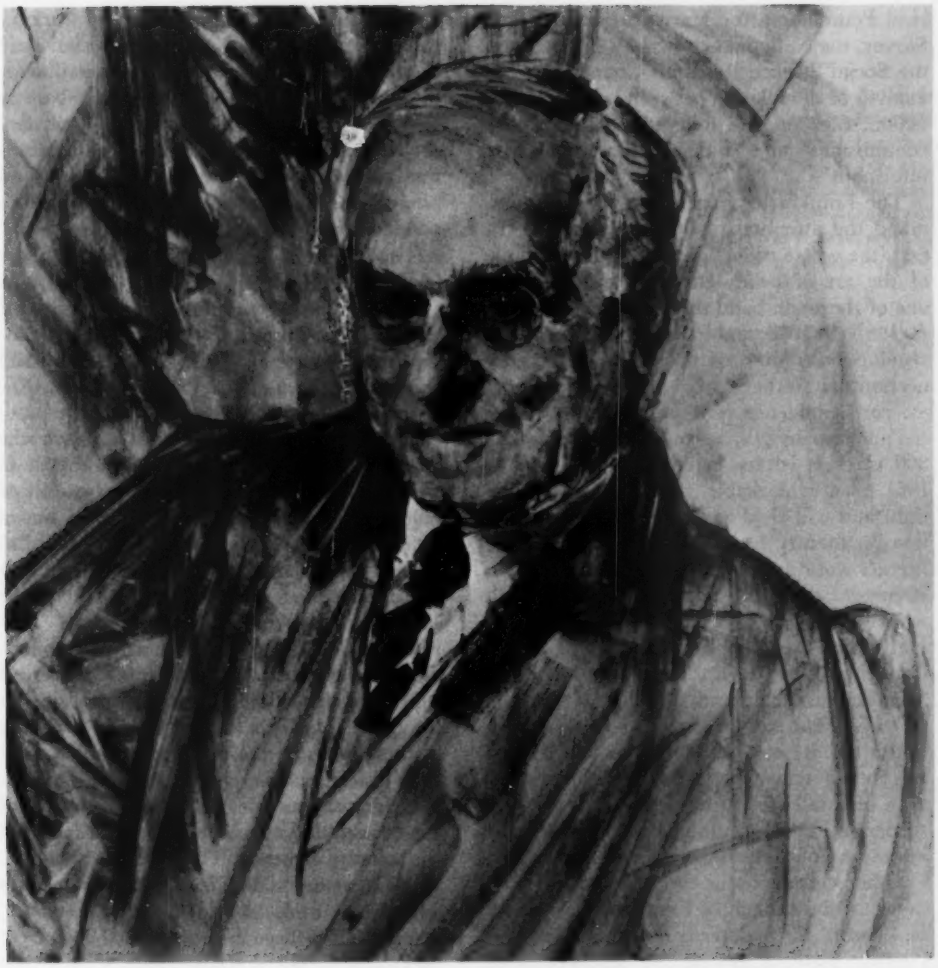
> The successful biographer must supply insight. Yet how much real insight have we about the seventy-four men who constitute the Supreme Court's roll of judges? How much is known about the inner forces that directed their action and stamped the impress of their unique influence upon the Court. About most of the Justices we have only mortuary estimates.[2]

Frankfurter obviously does not fit his own description of a judge. His biographers are presented with an unusual opportunity and challenge. He left voluminous and self-revealing letters and at the same time established a criterion: "A biography is to be judged by the insight it gives into the complexities of character."

For insight into the complexities of Frankfurter's character the biographer will go first to the personal letters. To discriminate among the hundreds of correspondents will be no easy matter. Frankfurter was as likely to expound his philosophy of life and law to a graduate student as to a cherished friend. Thus it may be invidious to single out his exchanges with Dean Acheson, Charles C. Burlingham, Richard Casey, Herbert Croly, Charles P. Curtis, Herbert Feis, Henry J. Friendly, Erwin Griswold, Max Lowenthal, Archibald MacLeish, Reinhold Niebuhr, and Franklin D. Roosevelt. One feels justified, however, in singling out Harold Laski. Unfortunately, few of Frankfurter's letters to his British friend were retained, but some 200 incoming Laski letters, nearly all handwritten, comprise a sparkling and informative critique of British and American politics during the period 1917–64 and reveal much about the political and social theories of the two men.

Democracy, law and politics in their broadest sense, the Supreme Court as an institution, the judicial process, Anglo-American civilization, these come through in the Frankfurter letters as the dominating interests of his life. Other major themes are federalism, the third degree, criminal justice, legal education, and the Harvard Law School. The letters contain ample substance for interpretive monographs on the thought and personality of Felix Frankfurter, in the manner of his own writings on Mr. Justice Holmes.

Of the Supreme Court and the judicial process Frankfurter wrote extensively during the quarter century preceding his appointment in 1939. Moreover, his judicial opinions are readily at hand in the *U.S. Reports*. It cannot be said then that his personal papers add greatly to our understanding of his jurisprudence. For his impress on the Court the researcher will need to consult the legal papers at Harvard. The personal papers, however, disclose the intellectual world of a sitting Justice. Reinhold Niebuhr drove him "not recalcitrantly" to St. Thomas and the *Summa*. To Boston lawyer Charles Curtis he revealed that "there are two books to which I am greatly beholden for affecting in important ways my feelings about the Universe or



Portrait of Felix Frankfurter by Gardner Cox, reproduced from a photograph in the Frankfurter papers, with permission of the artist.

rather my relations toward it. They are John Morley's *Compromise* and Leonard Huxley's life of his father." History and biography were the staple of his reading. There is also much "jaw," as he liked to put it, on contemporary affairs with public men, writers, and columnists, but never a breach of the canons of judicial ethics.

Subject files in the Frankfurter papers are as important as the personal files for the biographer. Certainly they are the most relevant part of the collection for those interested in the development of legal and social institutions. Although these were compiled for the most part during his years at the Harvard Law School, they reflect the exercise of Frankfurter's talents and influence beyond the confines of the classroom. Significant and related files exist for the American Law Institute, the American Civil Liberties Union, the Cleve-

land Foundation, the Harvard Boston Crime Survey, the National Consumer's League, and the Social Science Research Council. For an analysis of the relation between law and social action, files on the independent regulatory commissions and industrial relations are informative.

The Frankfurter papers will likewise command the attention of literary historians. In fact, the whole collection is a superb example of the art of belles-lettres. Frankfurter was one of the small band that launched the *New Republic* in 1914, and for many years he was a regular contributor to its columns. In this connection the Herbert Croly and Francis Hackett correspondence is illuminating. It is not too much to say that a group of approximately 300 Hackett letters, extending from 1918 to 1961, is a remarkable collection in its own right and will yield new and critical information on literary personages and much of the literary world for the period between the wars. Representative of other literary figures with whom Frankfurter corresponded are Norman Hapgood, Matthew Josephson, Dorothy Canfield Fisher, Freda Kirchwey, Henry L. Mencken, and Edmund Wilson.

An integral part of the Frankfurter collection is a quite complete set of his articles and speeches. Fugitive items such as a memorandum of a talk with Justice Brandeis give the reader an intriguing glimpse of life behind the Supreme Court's curtain.

Other collections in the Manuscript Division that the student of Frankfurter will wish to consult for complementary and supplementary material include the papers of Newton D. Baker, Reinhold Niebuhr, J. Robert Oppenheimer, and James M. Landis.

The unusual variety and high quality of this collection are a guarantee that of Felix Frankfurter we surely shall have more than "mortuary estimates."

James M. Landis Papers

For many years the name of James M. Landis was synonymous with administrative and labor law. Associated with the Harvard Law School from 1926 to 1946 as faculty member and dean, Mr. Landis played a crucial role in drafting New Deal legislation in the field of securities and the stock exchange. His public service also included membership on the Federal Trade Commission, chairmanship of the Securities and Exchange Commission and of the Civil Aeronautics Board, and adviser to President Kennedy on the independent regulatory commissions.

The Landis papers, numbering about 75,000 items, the gift of Dr. and Mrs. Charles McLaughlin, are of exceptional importance for students of administrative history from the inception of the New Deal through the early months of the Kennedy administration. For monograph studies of the administrative process, the papers are particularly full for the years 1933–37 and for the post-World War II period. Landis had the unique opportunity of helping to draft the Federal Securities Act of 1933 and the supplementary Securities Exchange Act of 1934, and of subsequently administering these statutes as a member of the Federal Trade Commission and of the Securities and Exchange Commission. Correspondence and subject files containing numerous legislative drafts will be studied carefully for possible new insight on the legislative history of these acts and the philosophy behind their administration. The historian should also consult, for comparative purposes, an account of the background of the Securities Act found in the Library's Huston Thompson papers.

Aviation was a field of special interest for James Landis. As he told President Truman: "Aviation has been like a child to me. I get sentimental when I think about it." Files for the period of his chairmanship of the Civil Aeronautics Board, 1946–47, are among the most valuable of the whole collection. International and domestic air routes, airline mergers, and air cargo were some of the large questions with which the Board had to deal. The papers afford a relatively complete record of the Board's objectives and its approach to unprecedented problems in a rapidly expanding industry. Landis was not reappointed in 1947. His deep disappointment can be inferred from an interesting memorandum detailing what was in reality a dismissal interview with President Truman in December 1947.

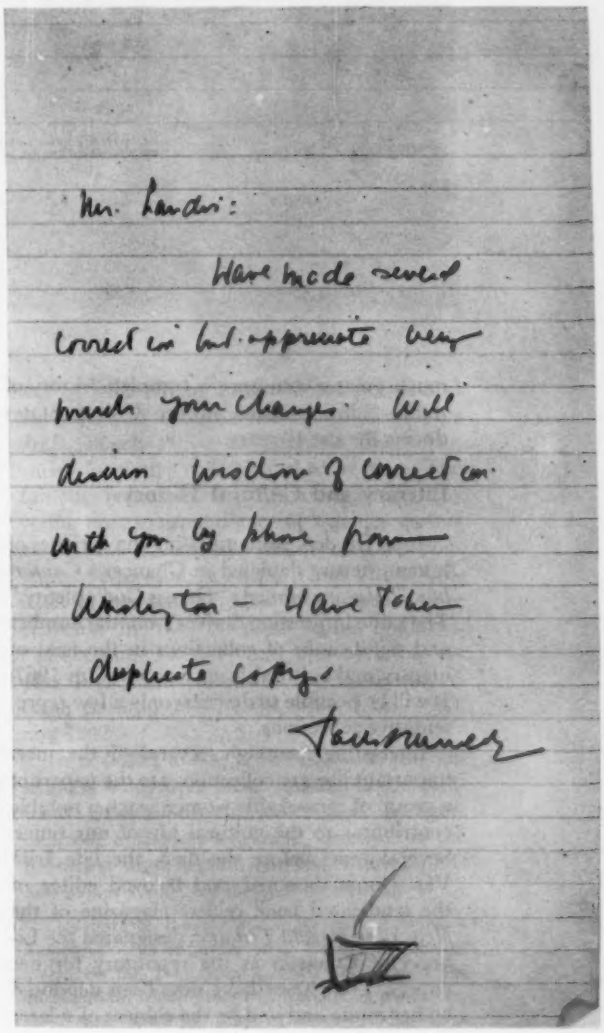
After Landis left the Civil Aeronautics Board he went into private law practice, frequently representing commercial airlines before his former agency. Political scientists have long been interested in this phase of administrative law and will read the extensive case files with a view to testing certain hypotheses about the decision-making process in governmental agencies.

The collection, especially for the earlier years, is revealing too of Landis the man. It is from this segment that one can begin to sketch a more complete profile of the individual. There is warm family correspondence for the 1920's and 1930's. Two fragmentary diaries also supply insight. At the age of 17 Landis joined the British YMCA as a way of serving in World War I. Youthful impressions of France are recorded in one of the diaries. A second journal for 1928–29 is instructive for Landis' early legal thinking and reading, and for comments on such outstanding personalities at the Harvard Law School as Felix Frankfurter, Roscoe Pound, and Josef Redlich. General correspondence for the earlier years shows the development of his work in the field of uniform State laws and legislative regulation of public utilities.

Landis was a lifelong friend and adviser to Joseph P. Kennedy. He was also close to John and Robert Kennedy. The papers substantiate that the Kennedys often availed themselves of Landis' advice and services in political as well as legal matters. It was symbolically appropriate that Landis' last public service was performed for President Kennedy. The material for his report on the regulatory commissions is included in the papers.

There were many sides to the public and private career of James M. Landis. Those mentioned are merely suggestive. Researchers will be concerned with Landis' role as trial examiner in the highly publicized deportation proceedings against labor leader Harry Bridges; with his educational policies as law school dean; and with his perhaps lesser known association with the motion picture industry. They will find a wealth of primary source material on these and many other subjects of contemporary interest in the collection. With it, scholars can begin to write with

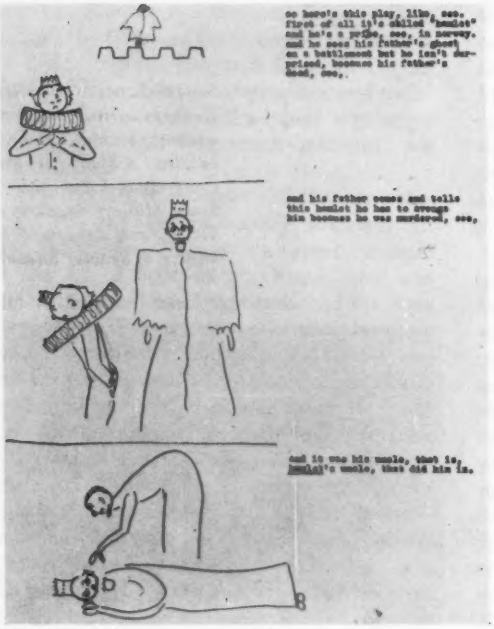
Note to James M. Landis from John F. Kennedy, written sometime in 1950, about a report to which Landis contributed, entitled "A Study Into the Problems of Congressional Appointments to the United States Military Academy and the United States Naval Academy." Used with permission of Senator Edward M. Kennedy.


Mr. Landis:

Have made several corrections in last appendix very much your changes. Will discuss wisdom of corrections with you by phone from Washington - Have taken duplicate copy.

Jack Kennedy

318-298 O—68——7



Left: First page of "Hamlet" from an unpublished manuscript of Famous Plays Revisited *by Shirley Jackson. Permission granted by Stanley Edgar Hyman.*

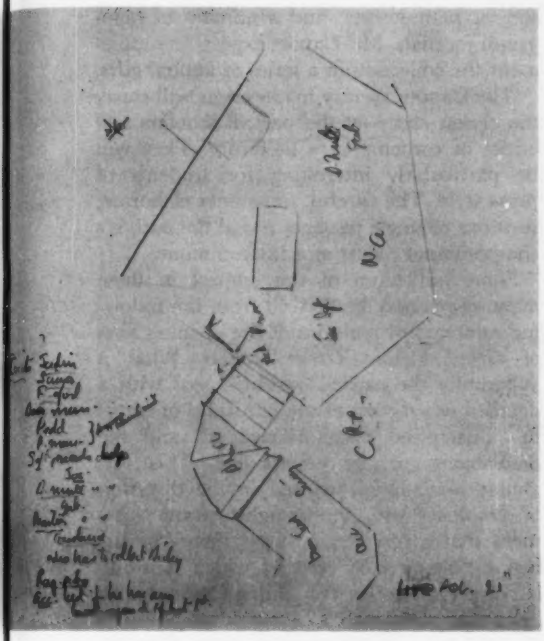
Right: Second act staging diagram and notations, with dialog, from the promptbook for The Mad Woman of Chaillot *by Jean Giraudoux, a National Repertory Theatre production directed by Margaret Webster for the 1965–66 season. Reproduced by permission of Miss Webster.*

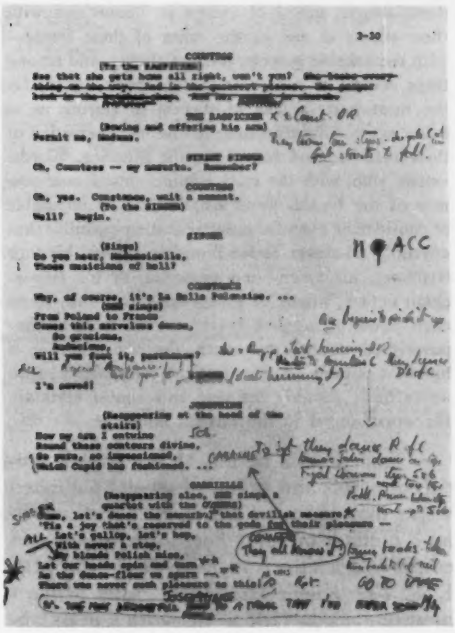
much greater assurance a complete history of public administration in the United States during the last 40 years.

Literary and Cultural History

John Dryden, contemplating the varieties of human nature depicted in Chaucer's *Canterbury Tales,* exclaimed: "Here is God's plenty." The same impression derives from the number and significance of collections in the field of literary and cultural history received in 1967. It will be possible to describe only a few representative collections.

Interestingly enough, several of the most important literary collections are the papers of a group of remarkable women, each a notable contributor to the cultural life of our times. Several years before she died, the late Irita Van Doren, honored and beloved editor of the syndicated book review magazine of the *New York Herald Tribune,* designated the Library of Congress as the repository for her papers. The papers have now been deposited by her estate and will be the subject of a later report. The death of Shirley Jackson in 1965 removed from the American literary scene one of its most accomplished practitioners of the short story, who was especially adept at the modern equivalent of the Gothic tale of terror. Her papers have come to the Library as the gift of her husband, the critic Stanley Edgar Hyman. Since its inception in 1925 *The New Yorker* has been graced by a series of "Letters from Paris," marked by clarity, wit, and uncompromising good sense. They are the work of Janet Flanner ("Gênet"), the first installment of whose papers came to the Library in 1967, the gift of Miss Flanner and of Solita Solano, her lifelong friend and companion. Miss Solano has also given a first group of her own papers, documenting her remarkable career in international journalism, philosophy, and the arts. The first installment of Margaret Webster's papers contains a fascinating series of prompt copies, equally divided between Shakespearean and non-Shakespearean productions, which permit detailed study of the methods of one of the most successful theatrical directors of the 20th century.





Edna St. Vincent Millay Papers

The Library has also received the first large installment of the papers of Edna St. Vincent Millay, placed by her sister, Mrs. Norma Millay Ellis. This group includes 55 notebooks and diaries, dating from 1908 to 1950, the year of the poet's death.

The Millay notebooks contain virtually the poet's entire literary output in draft form. They include pencil, ink, or typed drafts; notes and worksheets; prose; and some drafts of correspondence. The unusually large number of holograph emendations, corrections, and cancellations reveals the development of the poet's work. A notebook of special interest is "Poetical Works of Vincent Millay A.D. 1908 Camden, Me.," which contains fair copies of youthful poems, composed when the poet was 14 to 17 years old. In addition, there are 40 pages of later poetry in an entirely different, mature handwriting.

A very special item in the collection is an eight-page holograph poem entitled "Renaissance," an early draft of "Renascence," one of Miss Millay's best known poems and the one that brought her recognition. This draft, which shows considerable reworking, varies from the final published version. The famous recitation of "Renascence" by the young poet to an audience of summer visitors at her native Camden, Maine, and her consequent education at Barnard and Vassar Colleges by her patron, Miss Caroline Dow, are reflected in two of Miss Millay's diaries, "Sweet and Twenty" and one covering the year 1913. Other diaries in the Millay papers cover parts of 1927, 1928, 1933, 1936, 1938, and 1942.

In addition to the poetic drafts in the collection, holograph prose fragments are scattered throughout the notebooks. A lighthearted, and knowledgeable, example is the following draft section of Miss Millay's preface to her *Collected Sonnets* (1941):

> This part of the preface is by way of being a monograph, an informal essay on the Sonnet, or rather on the Two Sonnets, the Petrarchian & the Elizabethan, which most English-writing poets have tried their hand at, some of them—among them

poets seldom heard of except in connection with their efforts in one or the other of these forms—with remarkable success; some of them—and among them several of our most famous poets—with, for the most part, a lack of success so glaring as to cause acute embarrassment in the more sensitive of their readers; and some—as, for instance, Wordsworth, who, with the truly sublime unselfconsciousness of the typical pious Englishman, is incapable of considering even for a moment the possibility that anything whatever about him, his gaiters, his butterfly-net, his green-lined umbrella, or his Petrarchian octave, might be so uproariously funny as to elicit yowls of helpless laughter even from an impoverished nephew to touch the old relic for a hundred pounds—as for instance Wordsworth, who wrote quite possibly the best and almost certainly the worst sonnet in the English language.

A final portion of the Millay papers consists of proofs and galleys of several published works that appeared either during Miss Millay's lifetime or after her death in volumes edited by her sister and literary executor, Mrs. Ellis. *The King's Henchman,* Miss Millay's most famous operatic work, written in collaboration with Deems Taylor, is represented in a heavily corrected early draft, typescript, printer's copy, and proof. For *The Flowers of Evil,* which Miss Millay and George Dillon translated from the French of Charles Baudelaire, there are an annotated typescript and several sets of proofs. To this first installment of her sister's papers, Mrs. Ellis expects to add additional Edna St. Vincent Millay material from time to time.

*Truman Capote Papers**

Truman Capote has excelled in many forms of literature: novels, short stories, descriptive prose, dramatizations for the theater, and, most recently, the "non-fiction novel," typified by *In Cold Blood* (1965). These varied achievements are reflected in the manuscripts comprising the first installment of his papers in the Library of Congress. The 17 manuscripts include a partial holograph manuscript of *Other Voices, Other Rooms* (1948), in various drafts; a partial manuscript of *House of Flowers* (1956); a holograph manuscript of *Breakfast at Tiffany's* (1958); several shorter manuscripts; and a number of holograph journals. Mr. Capote expects to supplement the collection in a series of annual gifts.

The Capote literary manuscripts will repay the closest study on the part of scholars and critics of contemporary literature. They will be particularly interesting for students of prose style. The careful, sometimes elaborate, revisions of single passages reveal the author's compositional habits and his technique.

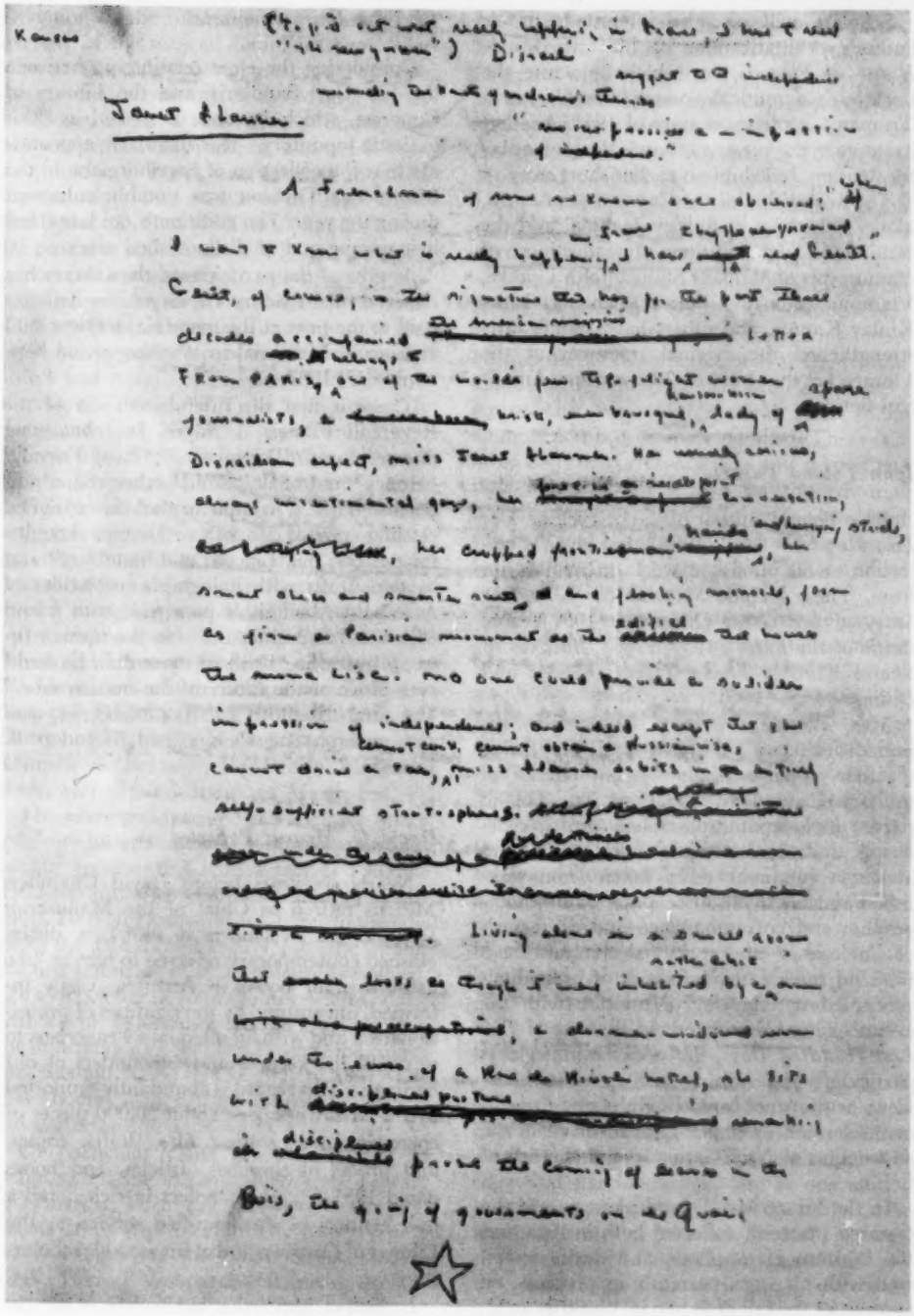
Some indication of the interest in these manuscripts may be derived from the following summary of revisions of the opening lines of *Other Voices, Other Rooms.* What is apparently the earliest version opens with a detailed description of the hardships of travel to "Cherryseed City, Mississippi" and the desolateness of the countryside. This was almost immediately revised in the direction of simplicity with the straightforward statement that a traveler must get there "by the best means he can," one of which is riding in a truck from the Turpentine Company. In successive revisions "Cherryseed City, Mississippi" becomes "Noon City," the Turpentine Company truck is given the function of collecting mail and supplies, and, in a fifth or sixth version, the local color is improved by naming it the "Chuberry Turpentine Company." Similar instructive changes abound in the Capote manuscripts.

A second feature of the papers is the relationship between the author's travel—recorded in his journals—and creative work associated with it. Perhaps the chief dual exhibits of this type are the 1957 journal of a trip to the Orient and the manuscript of his well-known profile of Marlon Brando, which appeared in *The New Yorker* in the same year. (Interviewing for the piece took place in Kyoto, Japan, where *Sayonara* was being filmed.) The manuscript of the profile, by the way, like many of the author's original manuscripts, is entered in school notebooks, in this instance notebooks purchased in Japan.

Truman Capote wrote the commentary for Observations, *a book of photographs by Richard Avedon published in 1959 by Simon & Schuster. Janet Flanner, the subject of this page of Capote's draft, is mentioned earlier in this article. Reproduced with permission of the author.*

Kansas

Janet Flanner.



Scholars will also be interested in the author's dramatizations of his own works. *House of Flowers,* for which he wrote the book, was a musical comedy based upon a Truman Capote short story of 1951. Another example in the present group is the screenplay for *Miriam,* based on an earlier short story.

The acquisition of the Capote manuscripts, along with those of Shirley Jackson, and the continued augmentation of collections of manuscripts of William Styron, John Updike, Vladimir Nabokov, James Michener, MacKinlay Kantor, and others have significantly strengthened the original resources of the Library for the study of 20th-century American fiction.

John Toland Papers

John Toland, author of the best selling *The Last Hundred Days* (1966), has given a collection of his published works in manuscript form. These include *Ships in the Sky: The Story of the Great Dirigibles* (1957), *The Battle of the Bulge* (1959, 1966), *But Not in Shame* (1961), *Flying Tigers* (1963), and *Dillinger Days* (1963).

Mr. Toland's writing emphasizes the human element in events and the fitting together of pieces of the "jigsaw puzzle" of military or gangland operations. The Toland papers include multiple rough drafts, typescripts, and proofs of each of the books listed above; voluminous notes taken from published and archival sources; maps and photographs; and correspondence and/or records of interviews and personal reminiscences from, in some cases, hundreds of individuals concerned in one way or another with the events or era investigated. In the case of *The Last Hundred Days,* the research material is particularly rich in over 1,200 personal interviews with Americans, Englishmen, Frenchmen, Germans, and Russians involved in the destruction of Nazi Germany and the fall of Berlin.

In the future Mr. Toland plans to add the research material, collected both in Asia and the Western Hemisphere, and drafts associated with his work currently in progress, an account of the fall of Japan in World War II.

Carl Sandburg Memorial

Considering the close relationship between the late Carl Sandburg and the Library of Congress, which he once described as "this majestic repository," it is singularly appropriate that the collection of Sandburgiana in the Manuscript Division was notably enhanced during the year. The addition is not large, but it is unique and of distinguished origins.

As gifts of the participants, the Library has received the reading copies of the tributes paid to the poet at the memorial services held at Lincoln Memorial in Washington on September 17, 1967.

There is first the brief invocation of the Reverend Francis B. Sayre, Jr., containing phrases from "Timesweep," "Pass, Friend," "Honey and Salt," and other Sandburg poems. This is complemented by a signed reading copy of Mark Van Doren's thoughtful remarks on "Lincoln and Sandburg" and by two drafts with holograph corrections of Archibald MacLeish's panegyric to a friend who was "committed . . . to the human future," and who "believed more than he could ever prove of the future of the human race." The final tribute to a "vital, exuberant, wise and generous man" is signed "Lyndon B. Johnson."

David C. Mearns Papers

Nearly six years before David Chambers Mearns retired as Chief of the Manuscript Division on December 16, 1967, a distinguished contemporary referred to him as "the great man of books in America, vastly informed, uncaptured by the rigidities of professionalism and with an unequalled eagerness to serve all the keepers and expounders of our heritage." This regard is abundantly supported by the Mearns papers, about 20,000 pieces of correspondence, subject files, drafts, copies, and proofs of speeches, articles, and books dated 1931–67, which reflect in rich detail a half century of distinguished service to the Library of Congress and of impeccable scholarship.

A distinct impression derived from an ex-

amination of the papers is the extraordinary diversity of the subjects found in them. The collection includes provenance notes and essays on such monuments as the Magna Carta, the Constitution of the United States, the Declaration of Independence, and the Gettysburg Address. There are detailed inquiries into the origins and traditions of "Hail to the Chief" and "In God We Trust." But the material on these stately subjects is accompanied by comments and research notes, equally detailed, on such topics as the first advertisement for Coca-Cola; Abraham Lincoln's shoe size (14½A); a collection of quotations on the futility and pitfalls of genealogy; and a compilation of "Benighted Titles," including "It Happened One Night," "Night and Day," "'Twas the Night Before Christmas," and "When Knighthood Was in Flower."

This broad range of interests is also reflected in the correspondence files. His correspondents are, not unnaturally, bibliophiles, but their specialized areas of study are diverse. To select from a single letter of the alphabet, there is correspondence with historians Samuel Flagg Bemis and Howard K. Beale; editors Julian Boyd and Lyman Butterfield; collectors Henry Bass and Herman Blum; Lincoln specialists Henry L. Bullard, Benjamin J. Barondess, and Kenneth A. Bernard; the British Museum; Bobbs-Merrill; and Broadcast Music, Inc.

This correspondence reveals a scholar and a reference librarian at work—illuminating, suggesting, commenting with a tact and humor that keep authority from ever sounding magisterial. Here, for example, is a letter to the editor of the *The Adams Papers,* advising him of the first publication, in an obscure periodical, of an 1833 letter of John Quincy Adams, along with a reply to a routine inquiry from a collector informing him that the Peter Force collection was purchased by Congress in 1867. The files abound with similar instances of generous assistance and scholarship.

Of particular value is an abundance of material relating to the history of the Library of Congress. There are the notes, drafts, and proofs from which came *The Story Up to Now,* a history of the Library from 1800 to 1946. There is comparable material, equally voluminous, that led to *Herbert Putnam: Librarian of the United States*—the man who, Mr. Mearns wrote, "tended" the Library of Congress with "perspicacity, perspicuity, and perspiration." These are complemented by correspondence with each of the Librarians of Congress from Mr. Putnam to L. Quincy Mumford, letters exchanged with other Library officials, and files on many of the symposia, exhibits, and special observances that occurred during his long tenure.

The papers illustrate profusely Mr. Mearns' service on scholarly boards and commissions. A large file of material documents his membership on the National Civil War Centennial Commission. The documentation of his service on the National Historical Publications Commission is even more detailed. There is a large body of correspondence and related papers reflecting his service on the editorial boards of the *Papers of Ulysses S. Grant* and the *Papers of Woodrow Wilson.* His interest in the Manuscript Society, which he served as president, is also evident.

If there is a dominant subject in the papers, it is probably Abraham Lincoln and his times. Mr. Mearns' deep and abiding interest is amply illustrated by the subject files, with such titles as "Abraham Lincoln Bookshop," "Abraham Lincoln Foundation," "Lincoln Bibliography," "Lincoln Collection of Alfred Whital Stern," "Lincoln Day by Day," "Lincoln-Douglas Debates," "Lincoln Sesquicentennial Exhibit," and "Lincoln Sesquicentennial Joint Session of Congress." There are notes, again to select at random, on "Abraham Lincoln's Religion," "Lincoln's Reading," "Ottawa Debate," "Lincoln and Libraries," "Lincoln College," and "Abraham Lincoln in New Jersey." His volumes *The Lincoln Papers* and *Largely Lincoln* are fully represented by notes, drafts, typescripts, and proofs.

The correspondence also reveals the depth of this interest in Lincoln. His letters to Lincoln collectors, scholars, and enthusiasts offer overwhelming evidence of the detailed knowledge that has established him as one of the most eminent of authorities on the subject. His letters to Professor James G. Randall, perhaps the preeminent Lincoln biographer of this century, and Ruth Painter Randall, the biographer of Mary Todd Lincoln, are illustrative.

Here are extracts from letters to Mrs. Randall, written on various dates in 1957 when she was preparing a children's book on Lincoln and animals:

An account of an accident which befell Mrs. Lincoln as a consequence of a runaway horse appears in *The New York Herald*, Saturday, July 4, 1863, p. 4, col. [5]

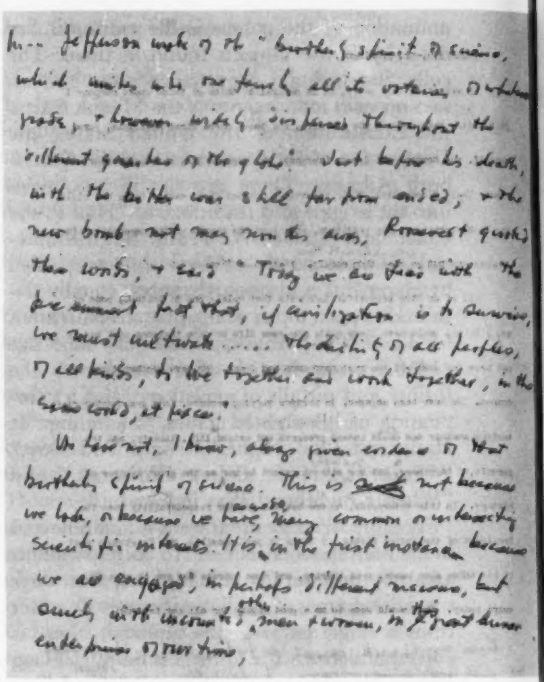
A humorous piece on the 'Very Dangerous Illness of the President's Dog' appeared in the *New York Dispatch* for Sunday, April 24, 1864, p. [1], col. [3]

I venture to call to your attention a brief account of "The Pedigree of Mrs. Lincoln's Team," which appeared in *Wilkes' Spirit of the Times*, Vol. 5, No. 4, Saturday, September 28, 1861, p. 51.

With Professor Randall there is a sheaf of correspondence ranging in subject from *The Lincoln Papers* to attempts to establish the identity of a correspondent who signed himself only "C.E.L." in an 1872 issue of *The Christian Register*.

Among the Lincolnians represented in the Mearns papers is Carl Sandburg, although the subject of their correspondence is not limited to Lincoln. There are appeals by Mr. Mearns for additions to his "Carlovingian collectanea," and Sandburg's comments that "you are good *to* and *for* me." There are facetious signatures and salutations such as "Dr. William Shakespeare Hemingway Watts," and a copy of a 1904 issue of the *Lombard Review* listing Sandburg as the left guard in a basketball game against the Galesburg, Ill., YMCA. Part of the correspondence relates to Sandburg's lecture on the Civil War, given in the Library's Coolidge Auditorium on October 16, 1961, and its subsequent publication by the Library. In a discussion of titles on December 19, Mr. Mearns suggested "Arches," or "Fallen Arches," or "better still for this season of the year, 'Arch the Herald Angel Sings.' "

Other, selected, correspondents not previously mentioned include Paul M. Angle, Oliver R. and Roger Barrett, Leonard Carmichael, Gerald Carson, Bruce Catton, Jonathan Daniels, David Donald, John Dos Passos, Felix Frankfurter, Douglas S. Freeman, Bess Furman, William D. Hassett, MacKinlay Kantor, Alfred A. Knopf, William Kaye-Lamb, Archibald MacLeish, Earl S. Miers,



Allan Nevins, Ralph G. Newman, David A. Randall, Philip Sang, Alfred Whital Stern, Justin G. Turner, Irita Van Doren, and Bell I. Wiley.

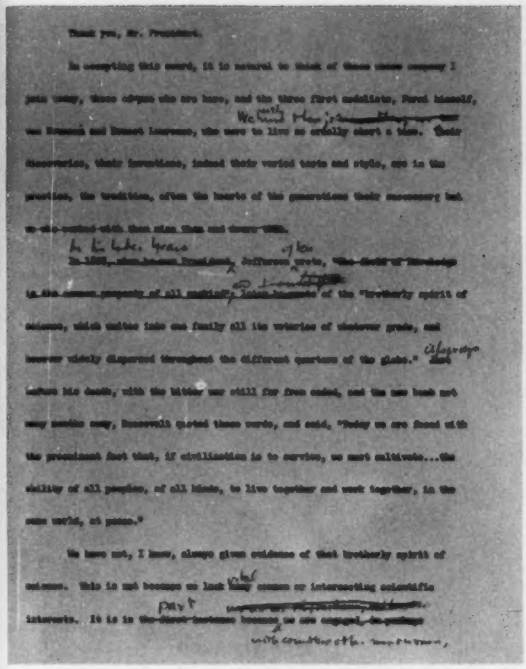
Scientific History

The year was marked by continued growth of collections relating to scientific history. Two collections have been selected for extended description.

J. Robert Oppenheimer Papers

The papers of J. Robert Oppenheimer (1904–67) have been given to the Library by his widow. The 74,000-item collection comprises personal files, general correspondence files, professional files, speech, article, and book files, appointment books, and printed matter.

Dr. Oppenheimer was one of the principal



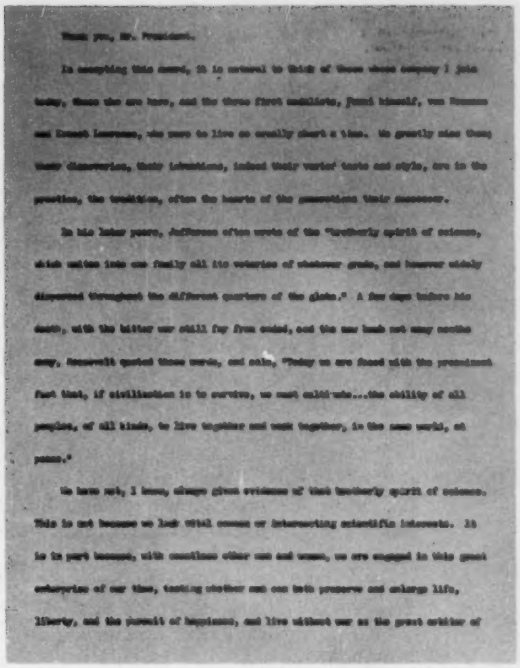
Thank you, Mr. President.

In accepting this award, it is natural to think of those whose company I join today, those others who are here, and the three first scientists, Fermi himself, von Neumann and Ernest Lawrence, who were to live so cruelly short a time. Their discoveries, their inventions, indeed their varied taste and style, are in the practice, the tradition, often the hearts of the generations their successors but no one matched with them nine them and those with.

In his later years, Jefferson often wrote of the "brotherly spirit of science, which unites into one family all its votaries of whatever grade, and however widely dispersed throughout the different quarters of the globe." A few days before his death, with the bitter war still far from ended, and the new book not many months away, Roosevelt quoted these words, and said, "Today we are faced with the preeminent fact that, if civilization is to survive, we must cultivate...the ability of all peoples, of all kinds, to live together and work together, in the same world, at peace."

We have not, I know, always given evidence of that brotherly spirit of science. This is not because we lack vital causes or interesting scientific interests. It is in part because, with countless other men and women, we are engaged in this great enterprise of our time, testing whether men can both preserve and enlarge life, liberty, and the pursuit of happiness, and live without war as the great arbiter of history. In this enterprise, no one bears a greater responsibility than the President of the United States. I think it just possible, Mr. President, that it has taken some charity and some courage for you to make this award today. That would seem to us a good augury for all our futures.

These words I wrote down about a fortnight ago. In a somber time, I gratefully and gladly speak them to you.



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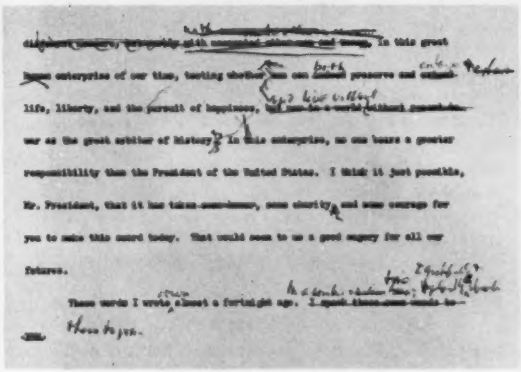

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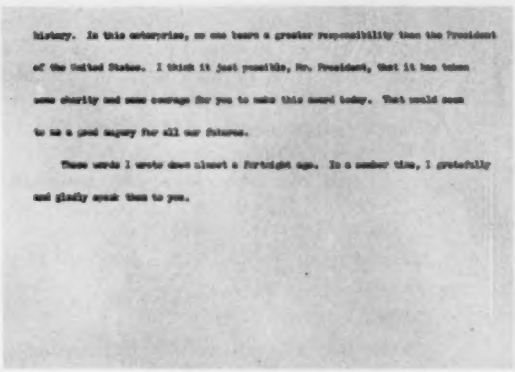

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In the J. Robert Oppenheimer papers are several drafts of his speech accepting the Fermi Award of the Atomic Energy Commission, conferred by President Lyndon B. Johnson in December 1963. Used with the permission of Mrs. Oppenheimer.

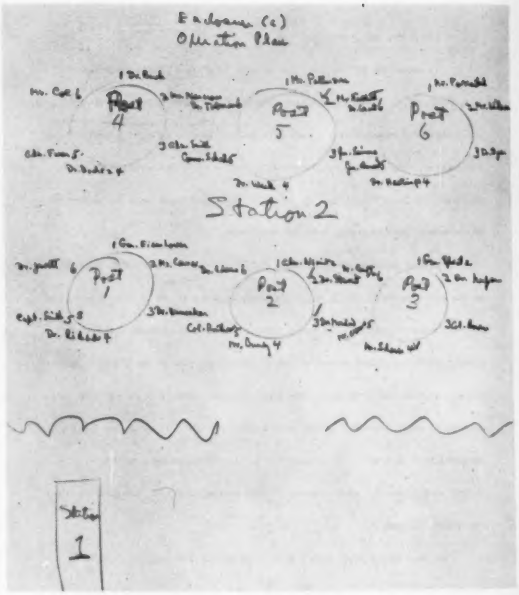
From left to right: Handwritten additions made on the back of an early one-page draft; a two-page draft containing the earlier changes, with further revisions written in; and the final version, in carbon copy form. Oppenheimer gave the ribbon copy of his speech to Mrs. John F. Kennedy and the first carbon copy to Laura Fermi, the widow of Enrico Fermi.

figures in the development of the atomic bomb, an adviser to the Government, a director of the Institute for Advanced Study for almost 20 years, and the center of controversial security proceedings of worldwide import. His working associations and long relationships with some of the most eminent men of science of the 20th century were coupled with his friendships with outstanding world figures in other intellectual fields. The importance of Dr. Oppenheimer and the interest accorded him in the United States and abroad make the Oppenheimer papers a primary resource for recent intellectual history.

The largest amount of material in the collection is correspondence, including communications from such world-famous leaders of science as Niels Bohr (35 letters), Sir John Cockcroft (12 letters), Albert Einstein (3 letters), Edward U. Condon, David E. Lilienthal, Gordon Dean, and Lt. Gen. Leslie Groves, Director of the Manhattan Project. Presidential letters include a wartime letter from Franklin D. Roosevelt and letters from Presidents Truman and Eisenhower. Twenty to 30 letters each are from such figures as Justice Frankfurter, James B. Conant, and Archibald MacLeish. Smaller numbers of letters are from T. S. Eliot, King Baudouin of Belgium, Indira Gandhi, Bertrand Russell, Stephen Spender, Dag Hammarskjöld, Pablo Casals, and others.

Typical of Dr. Oppenheimer's wide-ranging intellectual interests is his explanation of the code name "Trinity," his designation for the Los Alamos Project. In a letter to General Groves, October 20, 1962, Dr. Oppenheimer wrote:

> There is no rational answer to your question about the code name Trinity. I did suggest it, but not on the ground that it is a very common name for rivers and peaks, and not only in Texas: one enters New Mexico from the northeast through Trinidad. Why I chose the name is not clear, but I know what thoughts were in my mind. There is a poem of John Donne, written just before his death, which I know and love. From it a quotation:
>
> As West and East
> In all flatt Maps—and I am one—are one,
> So death doth touch the Resurrection.



Vannevar Bush, Director of the Office of Scientific Research and Development throughout its existence, prepared this seating chart for "Operation Pay Off," held January 19, 1947, to commemorate the successful completion of OSRD's *wartime mission.*

The notes at right were written by Dr. Bush in the course of preparing a report that was submitted to President Harry S. Truman on October 12, 1945. Both the notes and the chart are reproduced by permission of Dr. Bush.

That still does not make Trinity; but in another, better known devotional poem Donne opens, "Batter my heart, three person'd God;—." Beyond this, I have no clues whatever.

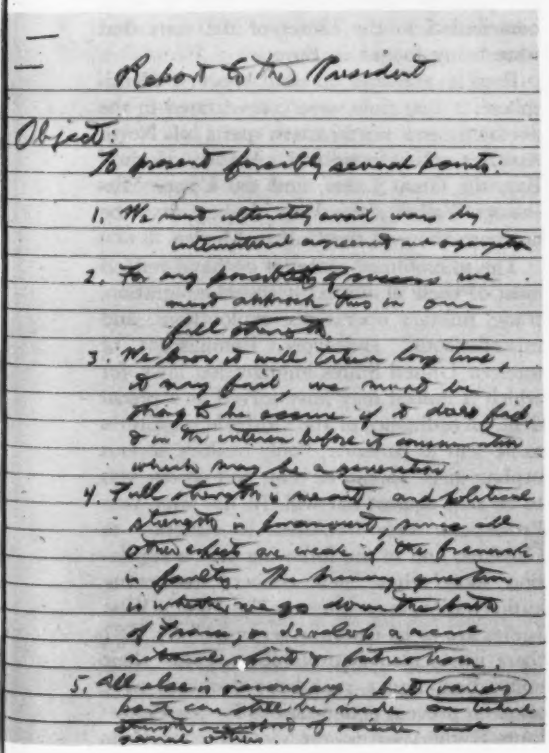
The Oppenheimer papers contain approximately 275 lectures, speeches, and articles. They vary from holograph pencil notes to full transcripts taken from tape recordings, which are part of the gift. Another special portion of the collection pertains to the Oppenheimer security hearing before the Atomic Energy Commission in 1954. In this group of papers appear many drafts of autobiographical sketches and other materials prepared by Oppenheimer and his wife for his defense. The pre-World War II period of Dr.

Oppenheimer's life is not covered except in retrospect.

Vannevar Bush Papers

The Library has also received the papers of Vannevar Bush, who was president of the Carnegie Institution of Washington, 1939–55, and Director of the Office of Scientific Research and Development, 1941–47. Consisting of some 80,000 items, the collection reflects Dr. Bush's distinguished career in electrical engineering and the administration of scientific research. Scientific and general correspondence, subject files, speeches and articles, laboratory notebooks, files and notebooks concerning inventions and patents, research notes, and manuscripts for books such as *Modern Arms and Free Men* (1949) are among the materials in the gift.

Internationally known for his development of electrical integrators for solving complex equations in science and engineering, Dr. Bush in his wartime role as Director of the Office of Scientific Research and Development was also an outstanding administrator. He brought many branches of the scientific community into effective working relationships with various Government agencies concerned with the war effort. The collection throws light on the challenges and complexities of the position.


Report to the President

Object:
To present forcibly several points:

1. We must ultimately avoid war by
2. For any possibility of success we
3. We know it will take long time,
4. Full strength is meant, and
5. All else is secondary, but

In addition to the organizational files, the collection contains correspondence between Dr. Bush and such figures as Dean Acheson, Henry H. ("Hap") Arnold, Bernard Baruch, Niels Bohr, Omar Bradley, Leonard Carmichael, Lucius Clay, Lloyd Viel Berkner, David Lilienthal, Robert P. Patterson, and Carl Spaatz. A few of the topics covered in the correspondence include—in addition to physics, engineering, and administration—optics, photography, fishing, zoology, penicillin, the principle of a solar-energy engine, the problems engendered by patent waivers for wartime research, the development of a "rapid selector" for the retrieval of material on microfilm and tape recordings, and the possibility of using artificial arteriovascular tubing in human beings.

On July 16, 1951, Dr. Bush wrote Gen. Omar Bradley on the subject of colorful wartime leaders and their hold on the popular imagination:

> . . . Emotional blind following of a colorful leader is not often affected much by cold facts on the record, but sometimes it is, for there are all shades of emotionalism merging into reasoned judgment. . . . there is no doubt that the initial, somewhat passionate rush of a section of the American people, dangerous as such phenomena of mass psychology always are, has been succeeded by a colder sort of evaluation under the long drawn out marshalling of the record and of contrary opinion.

Typically, however, Dr. Bush went on to comment to General Bradley on the importance of proximity fuses in modern warfare and on the "outmoded" military thinking behind the continued use, in Korea, of traditional tank warfare.

The Vannevar Bush papers should provide not only the historian of science but also the

political historian with valuable insight into the career of one of the Nation's most brilliant administrators in the field of science. The collection strengthens the Library's original sources for the study of the scientific-military-political aspects of America's participation in World War II. Related collections in the Manuscript Division include the papers of J. Robert Oppenheimer, Clinton P. Anderson, Samuel A. Goudsmit, Robert E. Gross, Curtis LeMay, Arthur D. Little, Grover Loening, and Byron S. Miller, as well as the files of the National Committee on Atomic Information.

Reproductions

In addition to original manuscript collections, the Manuscript Division added more than 750 reels of manuscripts on microfilm during 1967, about equally divided between domestic and foreign reproductions. A large part of the domestic reproductions are of LC's own manuscript collections, filmed under a program for preservation of rarities. The resulting positive film is available in the Manuscript Reading Room and on interlibrary loan. Copies may also be purchased through the Library's Photoduplication Service.

The research value of such collections on film is high. The following description indicates some of the research potential of a relatively small number of microfilm reels reproducing material from the Archives Nationales in Paris.

This series of material in the Archives de la Marine known as Marine B^2, Correspondance Général; *lettres envoyées* (*ordres et dépêches*) comprises outgoing royal orders and letters of the period 1662–1790. There are separate sections on the eastern fleet (*marine de levant*) and the western fleet (*marine de ponant*).

The material acquired so far, 57 volumes on 12 reels of 35 mm microfilm, is almost exclusively from the files of the western fleet and spans the years 1662 to 1686. (Eventually it will reach 1699 and cover 142 volumes.) This was the period of Louis XIV and Colbert, of Turenne and Vauban, of La Salle, Frontenac, and Iberville. It started with the death of Mazarin (1661), was characterized by a series of wars—the War of Devolution, 1667–68; the War against the Dutch, 1672–78; the War of the League of Augsburg, also known as King William's War, 1689–97—and ended with the Treaty of Ryswick, 1697. This was also the period of the revocation of the Edict of Nantes (October 18, 1685).

In the New World, Spain was still the predominant power in South and Central America, the Caribbean, and the southern and western parts of North America. Her position was increasingly challenged, however, by England, France, and Holland, and freebooters of these nations, whose activities reached a peak in the 17th century, played an important part in the decline of Spanish power and commerce. At the same time, England, France, and Holland made successful attempts to establish permanent colonies on the islands of the Lesser Antilles, the coasts of South America, and the northern, eastern, and southern parts of North America. This, in turn, contributed to the causes of the wars that were being fought in Europe.

French activities in the Western Hemisphere at that time were concentrated in the northern and northeastern parts of North America (Newfoundland, Acadia, Hudson Bay, the Great Lakes, and the Upper Mississippi Valley), the West Indies, and the northern shore of the Gulf of Mexico.

The microfilmed material on hand reflects most of these activities; it covers emigration, trade, military operations, explorations, and miscellaneous endeavors. Reminiscent of modern United States immigration laws, for which it indeed may have served as a precedent, an ordinance of 1685 forbade prostitutes to be sent to America; "only healthy, serious orphan girls" should be sent, and no one was to be sent against her will. In the same year Protestants were forbidden to emigrate to Carolina, and in the following year a regulation stated that "new converts requesting authorization to emigrate to the French West Indies are to be carefully screened." By 1687 there was a blanket prohibition against their emigration, and a year later measures were taken to prevent emigration of French Protestants. Soldiers' wives were allowed to join their

husbands in New France. By 1696 encouragement was given to skilled workers and craftsmen to go to the French West Indies, and young beggars from Nantes were sent there in 1697.

French trade, one of the mainsprings for exploration and colonization, was concentrated primarily in fishing off Newfoundland and commerce with the Caribbean islands. A great amount of correspondence, orders, and directives is devoted to the fishing in North Atlantic waters, especially at the Grand Banks, and the drying, transporting, and selling of the catch, primarily cod, in Mediterranean ports. From the Caribbean, France imported tropical woods, sugar, cocoa, ginger, and other produce and re-exported some of these goods to Italy and other European countries. It sent to the West Indian islands mulberry seeds and silk worms in an attempt to establish a silk industry in that part of the New World. There is some correspondence concerning the slave trade between Senegal and the French West Indies in 1692 and 1693, and there are also indications, in these years, of attempts to establish trade connections through Rio de Janeiro and Buenos Aires. A considerable number of orders and letters deal with the importation of Virginia tobacco and the procurement of furs and naval stores from New France. There is concern expressed also over the financial situation in New France, and several studies relate to Spanish trade with the New World.

Military operations and, to a lesser extent, exploration loom large in this series. Aside from routine ship and troop movements, supplies, reinforcements, exchange of prisoners of war, and similar day-to-day affairs, there are some interesting plans and reports. One is a study of 1689 pertaining to an attack on Greenland with the objective of destroying Dutch whaling interests; this seems to have been considered seriously enough to have been formulated into a plan in 1695. There are reports of the mapping of the mouth of the St. Lawrence River and about Iberville's expedition to the Hudson Bay and the Upper Mississippi Valley, and references to a Northwest Passage. A pilot's report of 1697 deals with the navigation of the Straits of Magellan. In the same year the establishment of a colony in Louisiana was being considered. There are several reports on La Salle's expedition to the mouth of the Mississippi.

Other correspondence deals with recurrent epidemics in the West Indies and measures to prevent their spreading; experiments to arrest the deterioration of ships' hulls in tropical waters; personnel appointments; and negotiations with Spain, England, and Holland culminating in the Treaty of Ryswick in 1697 and subsequent attempts to establish boundaries between French and English possessions in North America.

This collection of papers is a very important and a very interesting one for students of late 17th-century history, not only for its American aspects but for its European aspects as well.

NOTES

[1] In this report, and in the list that follows, an asterisk indicates restrictions on access to the collection. Information concerning access may be sought through the Chief, Manuscript Division.

[2] Earlier descriptions of Montgomery C. Meigs papers in the Library may be found in OJCA, 2: 102–103 (November 1944) and 20: 177–178 (June 1963); and QJLC, 22: 326 (October 1965).

[3] Philip Elman, ed., *Of Law and Men: Papers and Addresses of Felix Frankfurter, 1939–1956* (New York, 1956), p. 107–108.

MANUSCRIPT DIVISION

ACQUISITIONS, 1967

Listed below are the principal manuscript acquisitions of the Library of Congress that were added to the holdings of the Manuscript Division during 1967. Manuscripts in the fields of law, music, maps, and Orientalia; books in manuscript; and reproductions of manuscripts not of specific interest for U.S. history are described in other reports in the *Quarterly Journal*.

The arrangement is alphabetical by collection title within the following classified scheme.

I. Presidential Papers
II. Personal Papers
  A. Diplomatic, Military, Political, and Social History
    1. Colonial, Revolutionary, and National Period (to 1860)
    2. Civil War—Reconstruction (to 1900)
    3. 20th Century
  B. Literary and Cultural History
  C. Scientific History
III. Archives and Records
IV. Reproductions
  A. Domestic
  B. Foreign

With a few exceptions, gifts or purchases of a small number of items for addition to existing collections are not included in the list of acquisitions. However, the Library is greatly indebted to donors who have thus added to the strength of the national collections. They include Mrs. Bess Furman Armstrong, Wood Acres, Md.; Gordon T. Banks, Boston, Mass.; Dr. William Biederman, New York, N.Y.; Henry B. Cox, Washington, D.C.; Mrs. James Cunningham, Scotch Plains, N.J.; Jonathan Daniels, Raleigh, N.C.; Mrs. Elinor Rice Hays, New York, N.Y.; Herbert C. Jones, San Jose, Calif.; Professor Flint Kellogg, Carlisle, Pa.; Mrs. John Kieran, Rockport, Mass.; Mark Kiley, Amherst, Mass.; August P. LaFrance, Providence, R.I.; Mrs. Gale S. McLung, South Hadley, Mass.; John Marshall, Washington, D.C.; Mrs. James C. Neilson, St. Louis, Mo.; Jason Page, Washington, D.C.; Gen. P. M. Robinett, Mountain Grove, Mo.; Mrs. Robert E. Rose, Penns Grove, N.J.; Francis B. Sayre, Jr., Washington, D.C.; P. A. Spalding, Farnham, Surrey, England; Union League of Philadelphia; Louis Untermeyer, Newtown, Conn.; Mark Van Doren, Falls Village, Conn.; Professor Bell Wiley, Atlanta, Ga.; and Mrs. Robert B. Williamson, Augusta, Maine.

A key to the symbols used follows:

A	Addition
ALS	Autograph letter signed
ANS	Autograph note signed
D	Deposit
G	Gift
Ms	Manuscript
N	New
P	Purchase
T	Transfer
*	See note 1, page 349.

Collection title	*Source*	*Category*	*Approximate number of items*
I. Presidential Papers			
Cleveland, Grover	Willie H. Johnson Washington, D.C.	G A	1
ALS, 1889, copy	W. Stull Holt Seattle, Wash.	G A	1
Grant, Ulysses S. ALS, 1865, copy	Mrs. F. C. Baumgart Livingston, Mont.	G A	1
Jackson, Andrew draft of speech, 1831?	Charles Hamilton Autographs New York, N.Y.	P A	1
Johnson, Andrew	New York Public Library New York, N.Y.	P A	1
	Charles R. Chambers Silver Spring, Md.	G A	4
Lincoln, Abraham ALS, 1835, Matthew S. Marsh to George M. Marsh	Charles Hamilton Autographs New York, N.Y.	P A	1
ANS, n.d., to Captain Beckwith	Sotheby and Company London, England	P A	1
ALS, 1847	Thomas H. Farnsworth Waterford, Maine	P A	1
McKinley, William	George B. Cortelyou, Jr. Rumson, N.J.	G A	15
Wilson, Woodrow ALS, 1911	Mrs. A. G. Shriver Carson City, Nev.	P A	1
	Rare Book Division, LC	T A	14
II. Personal Papers			
A. Diplomatic, Military, Political, and Social History			
1. Colonial, Revolutionary, and National Period (to 1860)			
Carroll, Charles of Carrollton	Alvin Lohr Hagerstown, Md.	P A	25
D.C. Miscellany James Greenleaf to John Templeman, ALS, 1794	Howard Mott Sheffield, Mass.	P A	1
Gerry, Elbridge	Charles Hamilton Autographs New York, N.Y.	P A	5
Lear, Tobias	Charles Hamilton Autographs New York, N.Y.	P A	12
Partridge, Alden	Mrs. Donald Richardson Washington, D.C.	P A	600
*Rodgers-Meigs-Macomb Family	Capt. and Mrs. Alexander Macomb Washington, D.C.	D A	6,000
Thompson, Clark W.	Representative Clark W. Thompson Washington, D.C.	G N	50
			351

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
A. Diplomatic, Military, Political, and Social History—Continued 1. Colonial, Revolutionary, and National Period (to 1860)—Continued			
Webster, Daniel ALS, 1815	Charles Hamilton Autographs New York, N.Y.	P A	1
2. Civil War—Reconstruction (to 1900)			
Beardslee, Lester A.	Naval Historical Foundation Washington, D.C.	D N	2
Blair, Francis P.	William E. Smith Oxford, Ohio	G A	600
Cartter, David K.	Mrs. Eugenia Barnard Alexandria, Va.	G N	800
Chamberlain, Joshua L.	Rosamond Allen South Duxbury, Mass.	G A	9
Keim, DeBenneville Randolph, Family	University Manuscript Co. Oakland, Calif.	P A	70
Miller, Marshall M. correspondence	Mrs. Margaret M. Kane Norfolk, Va.	G N	1 v.
Miscellaneous Manuscripts Collection	Laurence E. Richardson Concord, Mass.	G A	3
Peckham, Rufus W.	Mrs. Henry A. Peckham New York, N.Y.	G A	9
	Thomas W. Stern Washington, D.C.	G A	11
Pleasonton, Alfred	Thomas Farnsworth Waterford, Maine	P N	8
Porter, Fitz John	Carl Vitz Cincinnati, Ohio	G A	4
Schnell, Joseph	Capt. Joseph W. Sullivan Sun City, Ariz.	G N	75
Sherman, William T. ALS, 1864	University Manuscript Co. Oakland, Calif.	P A	1
Watson, John C.	Naval Historical Foundation Washington, D.C.	D N	2, 500
*Young, John Russell, Family	Mrs. Gordon R. Young Washington, D.C.	D/G A	306
3. 20th Century			
Adee, Alvey A.	Carroll Stansbury Bethesda, Md.	G A	5

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
A. Diplomatic, Military, Political, and Social History—Continued 3. 20th Century—Continued			
Allen, Henry J.	Mrs. Julius Holmes Washington, D.C.	G A	100,000
*Alsop, Stewart	Stewart Alsop Washington, D.C.	G A	11
*Anderson, Clinton P.	Senator Clinton P. Anderson Washington, D.C.	D A	50,000
Anderson, Isabel	Allen Gardner Washington, D.C.	G N	300
Armold, Harold diary	Col. Harold Armold Randolph Air Force Base, Texas	G N	1
*Arnold, Henry H.	Mrs. H. H. Arnold Somona, Calif.	G A	2,600
Berryman, Clifford K.	Miss Florence Berryman Washington, D.C.	G A	400
*Brant, Irving	Irving Brant Eugene, Oreg.	D/G A	2,500
*Brennan, William J.	Mr. Justice Brennan Washington, D.C.	G N	500
Bryan, William J.	Rev. Hillyer H. Straton Malden, Mass.	G A	5
*Celler, Emanuel	Representative Emanuel Celler Washington, D.C.	G N	42,000
Chambers, Washington Irving	Naval Historical Foundation Washington, D.C.	D A	20
Cotton, Charles	Naval Historical Foundation Washington, D.C.	D N	1,200
Culbertson, William S.	Mrs. W. S. Culbertson Washington, D.C.	G A	800
*Douglas, William O.	Mr. Justice Douglas Washington, D.C.	G A	5,000
Doysié, Abel	Abel Doysié Paris, France	P N	2,500
Dow, Leonard	Naval Historical Foundation Washington, D.C.	D N	1,500
*Fahy, Charles	Judge Charles Fahy Washington, D.C.	G N	14,000

318-298 O—68——8

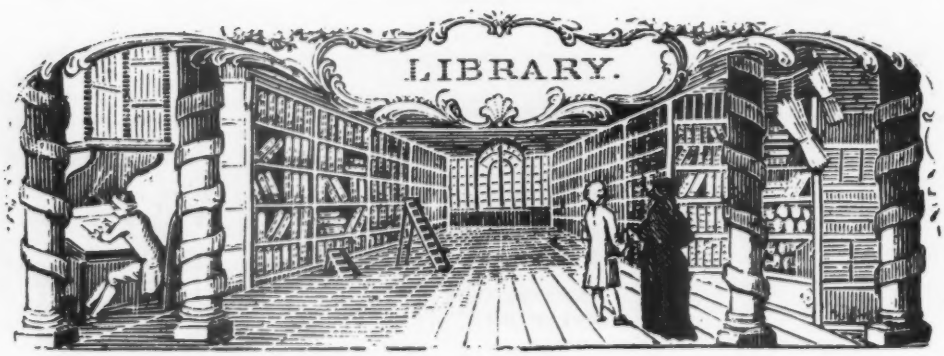
Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
A. Diplomatic, Military, Political, and Social History—Continued 3. 20th Century—Continued			
*Farley, James A.	James A. Farley New York, N.Y.	G A	5,000
Feis, Herbert	Herbert Feis York, Maine	G A	165
Frankfurter, Felix	Estate of Felix Frankfurter Washington, D.C.	G N	42,500
	Mrs. Francis Hackett Virum, Denmark	G A	300
*Foulois, Benjamin	Estate of Gen. Benjamin Foulois Washington, D.C.	G N	22,000
Garfield, Harry A.	Mrs. John P. Comer Williamstown, Mass.	G A	8
Johnson, Nelson T.	Mrs. Nelson T. Johnson Washington, D.C.	G A	750
Jones, Hillary	Naval Historical Foundation Washington, D.C.	D A	700
Kline, Burton	Mrs. Burton Kline Alexandria, Va.	G N	700
*Landis, James M.	Dr. and Mrs. C. C. McLaughlin Chevy Chase, Md.	G N	75,000
Leland, Waldo G.	Mrs. Waldo G. Leland Washington, D.C.	G A	10
*McCook Family	Mrs. Katharine McCook Knox Washington, D.C.	G A	1,250
McKenney Family	Mrs. Virginia McKenney Dunn Washington, D.C.	G N	250
Mearns, David C.	David C. Mearns Washington, D.C.	D A	20,000
Mitchell, William	Air Force Historical Foundation Washington, D.C.	D A	100
Naval Historical Foundation Journals	Naval Historical Foundation Washington, D.C.	D A	25
O'Neil, Charles	Naval Historical Foundation Washington, D.C.	D A	2,500
O'Neill, Dorothy Kitchen	Mrs. Edward O'Neill Newburgh, N.Y.	G N	150

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
A. Diplomatic, Military, Political, and Social History—Continued 3. 20th Century—Continued			
*Patton, Gen. George S., Jr.	Col. G. S. Patton Washington, D.C.	G A	75
Richardson, Holden	Naval Historical Foundation Washington, D.C.	D N	1,400
Richberg, Donald	Mrs. John H. Small Charlottesville, Va.	G A	300
Robinson, Lydia	Miss Lydia Robinson Paoli, Pa.	G N	6,500
Rodgers, William G.	Naval Historical Foundation Washington, D.C.	D N	1,000
Roosevelt, Kermit	Mrs. Kermit Roosevelt, Sr. New York, N.Y.	G A	250
*Sevareid, Arnold Eric Ms of "Politics and the Press"	Eric Sevareid Washington, D.C.	G A	2
Thompson, Huston	Mrs. John Farr Simmons Washington, D.C.	G N	1,500
*Tumulty, Joseph P.	Mrs. Philip Caulfield Chevy Chase, Md.	G A	10,000
	Joseph P. Tumulty, Jr. Washington, D.C.	G A	100
Webster, Harrie	Naval Historical Foundation Washington, D.C.	D N	35
B. Literary and Cultural History			
Bowen, Catherine Drinker Ms of *Miracle at Philadelphia*	C. D. Bowen Haverford, Pa.	G A	1
Caldwell, Erskine	I. L. Salomon New York, N.Y.	G A	14
*Capote, Truman	Truman Capote New York, N.Y.	G N	17
Cleland, Thomas M.	Chiswick Book Shop New York, N.Y.	P A	71
Cushman, Charlotte	I. K. Fletcher London, England	P A	2
Flanner, Janet—Solita Solano	Janet Flanner Paris, France Solita Solano Orgeval, France	G N	125
			355

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
B. Literary and Cultural History—Continued			
Frost, Robert	Doris Harris San Pedro, Calif.	P A	3
Gertz, Elmer	Elmer Gertz Chicago, Ill.	G A	2,000
Housman, Laurence	Mrs. Margaret Kalmbach Columbia, S.C.	P N	113
Jackson, Shirley	Stanley E. Hyman N. Bennington, Vt.	G N	7,500
Kleine, George	LC Motion Picture Section	T N	21,000
*MacLeish, Archibald	Archibald MacLeish Conway, Mass.	G A	9
*Millay, Edna St. Vincent	Mrs. Norma Millay Ellis Austerlitz, N.Y.	D N	69
Robinson, Edwin Arlington ALS, 1926	Charles Hamilton Autographs New York, N.Y.	P A	1
Shepley, Henry R.	Hugh Shepley Boston, Mass.	G N	150
Sifton, Claire G. and Paul F.	Mr. and Mrs. Paul F. Sifton Bailey Island, Maine	G A	83
Sunday, William A.	Mrs. Dorothy H. Daley Rockville, Md.	G N	50
*Styron, William completed Ms of *The Confessions of Nat Turner*	William Styron Roxbury, Conn.	D A	1
Toland, John	John Toland Sharon, Conn.	G N	7,500
Traubel, Horace and Anne M.	Gertrude Traubel Philadelphia, Pa. Charles E. Feinberg Detroit, Mich.	G A	400
Untermeyer, Louis Ms of *Labyrinth of Love*	Louis Untermeyer Newtown, Conn.	G A	1
*Van Doren, Irita	Estate of Irita Van Doren New York, N.Y.	D N	10,000
Walter, Thomas U.	Justin G. Turner Los Angeles, Calif.	G A	6
Webster, Margaret	Margaret Webster London, England	G N	200

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
B. Literary and Cultural History—Continued			
*Zorach, William	Tessim Zorach Brooklyn, N.Y.	G A	1,500
C. Scientific History			
Ames, Louise Bates	Mrs. Louise Bates Ames New Haven, Conn.	G A	120
Boggs, Samuel W.	Mrs. Dorothy C. Novak Hialeah, Fla.	G A	2,500
Bush, Vannevar	Vannevar Bush Belmont, Mass.	G N	18,000
Butterfield, Kenyon L.	Victor L. Butterfield Middletown, Conn.	G N	6,000
Elwell, Alcott F.	Mrs. A. F. Elwell Brookline, Mass.	G N	20
*Fedem, Paul	Ernst Federn Cleveland, Ohio	G N	7,000
Gamow, George	George Gamow Boulder, Colo.	G A	180
Gruenberg, Benjamin C. and Sidonie M.	Mrs. Sidonie Gruenberg Dr. Ernest M. Gruenberg New York, N.Y.	G N	4,000
Hornaday, William Temple	Temple Fielding New York, N.Y.	G N	1,000
Kobak, Edgar	Mrs. Edgar Kobak New York, N.Y.	G N	3,000
Oppenheimer, J. Robert	Mrs. J. R. Oppenheimer Princeton, N.J.	G N	74,000
*Pincus, Gregory	Estate of Gregory Pincus Shrewsbury, Mass.	G A	34,000
See, Thomas J. J.	American Institute of Physics New York, N.Y.	G A	100
*Wickes, Frances G.	Muriel Rukeyser New York, N.Y. Mrs. Mollie Bryan Cambridge, Mass. Dr. C. F. Midelfort La Crosse, Wis. Mrs. Helen Thorp Fort Lee, N.J.	G A	516

Collection title	*Source*	*Category*	*Approximate number of items*
II. Personal Papers—Continued			
C. Scientific History—Continued			
Wolman, Abel	Abel Wolman Baltimore, Md.	G A	180
III. Archives and Records			
*American Historical Association	American Historical Association Washington, D.C.	G A	6,000
American Medical Center for Burma, including Gordon Seagrave Papers	Weston Seagrave Arlington, Va. American Medical Center for Burma, New York, N.Y.	G A	10,000
American Psychological Association	American Psychological Association Washington, D.C.	G N	5,000
Harmon Foundation	Harmon Foundation New York, N.Y.	G N	45,000
Literary Society of Washington	Literary Society of Washington Washington, D.C.	G A	70
*National Urban League	National Urban League New York, N.Y.	G A	300
Olmsted Associates	Olmsted Associates Brookline, Mass.	G N	1,000
*Sigmund Freud	Sigmund Freud Archives New York, N.Y.	D A	500
Women's Joint Congressional Committee	Women's Joint Congressional Committee Washington, D.C.	G A	100



Collection title	*Location of originals*	*Quantity*
IV. Reproductions		
A. Domestic		
*Allen, Fred	LC	
	Mass. Institute of Technology Cambridge, Mass.	18 reels
American Library Association, Catalog Code Revision Committee	Laura C. Colvin Vancouver, B.C., Canada	2 reels
Bancroft and Bliss Family	Cornell University Ithaca, N.Y.	7 reels
Blaine, Ephraim	LC	10 reels
Brownson, Orestes A.	University of Notre Dame Notre Dame, Ind.	19 reels
Calhoun, John C.	LC	6 reels
Cameron, Simon	LC	22 reels
Catholic Archives of America	University of Notre Dame Notre Dame, Ind.	12 reels
Chandler, Zachariah	LC	4 reels
Chennault, Claire L.	Hoover Institution Stanford, Calif.	12 reels
Clay, Henry	LC	22 reels
Confederate States of America	LC	70 reels
Crittenden, John J.	LC	14 reels
Draper, Lyman C.	Wisconsin State Historical Society Madison, Wis.	49 reels
Ewing Family	University of Notre Dame Notre Dame, Ind.	6 reels
Friedman, Harry T. (coll.) La Santa Yglesia de Mexia (Cuadrantes), 1568–1610	La Santa Yglesia de Mexia Mexico City, Mexico	2 reels
Hammond Naval Papers	University of Virginia Charlottesville, Va.	3 reels
Holmes, Henry McCall journal	Southern Historical Collection University of North Carolina Chapel Hill, N.C.	25 pages
Lee Family	University of Virginia Charlottesville, Va.	8 reels
McLean, John	LC	18 reels
*Marshall, Peter sermons only	LC	6 reels

Collection title	*Location of originals*	*Quantity*
IV. Reproductions—Continued		
A. Domestic—Continued		
Mills, Robert	LC	63 pages
Mistral, Gabriela	New York Public Library New York, N.Y.	1 reel
Morrill, Justin S.	LC	52 reels
National Urban League minutes only	LC	1 reel
Pickens, Francis W., and Milledge Bonham	LC	1 reel
Pickering, Timothy	Mass. Hist. Soc. Boston, Mass.	69 reels
Reynolds, Thomas C.	LC	1 reel
Royce, Sarah Eleanor diary	Mrs. Robert L. Hacker Arlington, Va.	110 pages
Ruffin, Edmund diary	LC	2 reels
Sargent, Winthrop	Mass. Hist. Soc. Boston, Mass.	7 reels
Taylor, Zachary	Notarial Records, New Orleans, La.	23 pages
Thornton, Anna Maria diaries	LC	2 reels
Webster, Daniel	LC	8 reels
Willcox, Walter	Dr. Stuart Rice Washington, D.C.	2 reels
B. Foreign		
Correspondance Politique Etats-Unis, 1780–89, vol. 9–34	Ministère des Affaires Etrangères Paris, France	15 reels
Ecclesiastical records, Catalogue of archepiscopal records	Lambeth Palace Library London, England	3 reels
Fonds Mexicains, 1777–78, nos. 201–202	Bibliothèque National Paris, France	1 reel
Foreign Office 115, vol. 1631–2190	Public Record Office London, England	208 reels
Foreign Office 605 Registers 1793–1809	Public Record Office London, England	1 reel

Collection title	*Location of originals*	*Quantity*
IV. Reproductions—Continued		
B. Foreign—Continued		
Fox, George Townsend American journals	South Shields Public Library Durham, England	4 reels
Marine 1A[1] 1776–78, Port de Toulon	Archives Nationales Paris, France	1 reel
Marine B [1] Décisions, 1686–1789, vol. 1–30	Archives Nationales Paris, France	26 reels
Marine B [3] Correspondance, 1662–1790, vol. 1–34	Archives Nationales Paris, France	6 reels
Marine B [4] Campagnes, 1676–1829, vol. 318–320	Archives Nationales Paris, France	3 reels
Peruvian records, 1603–1875	Archivio Segreto The Vatican, Italy	13 reels
Plunkett, Horace	Plunkett Foundation London, England	10 reels
Relaciones Geograficas Mss 2449–2450, 18th century	Biblioteca Nacional Madrid, Sqain	1 reel

Index to Volume 25

U.S. GOVERNMENT PRINTING OFFICE: 1968 O—318-296

Some Recent Publications of the Library of Congress

Annual Report of the Librarian of Congress for the Fiscal Year Ending June 30, 1967. 1968. 198 p. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at $3 a copy. Free to libraries upon request to the Library of Congress, Office of the Secretary, Publications Distribution Unit, Washington, D.C. 20540.

Annual Report of the Register of Copyrights for the Fiscal Year Ending June 30, 1967. 1968. 32 p. Reprint from the *Annual Report of the Librarian of Congress*. Free on request to the Library of Congress, Copyright Office, Washington, D.C. 20540.

CLASSIFICATION SCHEDULES

Class B, Part I, B–BJ. Philosophy. 2d ed. 1950, reprinted with supplementary pages, 1968. 166, 101 p. $2.25.

Class M. Music and Books on Music. 2d ed. 1917, reprinted with supplementary pages, 1968. 157, 113 p. $2.75.

Class P, Subclasses P–PA. Philology, Linguistics, Classical Philology, Classical Literature. 1928, reprinted with supplementary pages, 1968. 447, 47 p. $3.25.

With the issuance of these three classification schedules, all those listed in *Library of Congress Publications in Print March 1968* as being in preparation, except the one for Class K, Law, are available. They are for sale by the Card Division, Library of Congress, Building No. 159, Navy Yard Annex, Washington, D.C. 20541.